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1053
No. 2905

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

Appellant

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

(In Four Volumes)

Vol. 4—Pages 763 to 854

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

Filed

SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

JAN 2 - 1917

F. D. Monckton,
Clerk.

EXHIBIT E

PROPERTY VALUATIONS

Dist. No. 1.	2	5,500
Block 1 Tidelands West	3	5,000
of Laurel Street.	4	4,000
Lot Val.	5	4,000
1 \$18,000	16	6,000
2 12,000	17	6,000
3 10,000	18	6,500
4 10,000	19	7,500
5 10,000	20	10,000
6 10,000		
7 10,000		62,000
8 10,000		
9 10,000	Blk 15 Town	
10 12,500	1	18,000
	2	14,000
	3	12,000
112,500	4	12,000
Block 1 East of Laurel	5	12,000
Street	6	12,000
1 12,500	7	12,000
2 10,000	8	12,000
3 10,000	9	12,000
4 10,000	10	15,000
5 10,000	11	10,000
6 10,000	12	7,500
7 10,000	13	7,000
8 12,500	14	7,000
9 18,000	15	7,000
	16	7,000
103,000	17	7,000
Block 2 East	18	7,000
6 2,500	19	8,000
7 3,000	20	12,000
8 4,000		
9 7,500		210,500
17,500	Blk 16 N. R. Smiths	
Block 14 Townsite Pt.	Subd.	
Angeles	1	6,500
1 7,500	2	5,000
	3	6,500

4	7,500	9	7,500
5	8,500		<hr/>
6	9,000		57,000
7	12,000	Blk 30 N. R. Smiths	
8	12,000	8	3,000
9	18,000	9	3,000
10	18,000		<hr/>
11	8,000		6,000
12	7,000	Dist. No. 2	
13	7,000	Blk 2½ East	
14	7,000	1	1,000
15	7,000	2	750
16	7,000	3	600
17	7,000	4	500
18	9,000	5	400
	<hr/>	7	750
	159,000		<hr/>
Blk 17 N. R. Smith			4,000
8	1,200	Blk 3 East	
9	5,000	1	2,500
10	6,000	2	1,500
11	4,500	3	1,500
	<hr/>	4	1,500
	16,700	5	1,500
Blk 32 N. R. Smiths		6	1,500
2	4,500	7	1,500
3	4,500	8	2,000
4	4,500	9	3,000
5	4,500		<hr/>
	<hr/>		16,500
	18,000	Blk 3½ East	
Blk 31 N. R. Smiths		1	750
1	7,500	2	500
2	6,000	3	500
3	6,000	4	500
4	6,000	5	500
5	6,000	6	500
6	6,000	7	500
7	6,000	8	500
8	6,000	9	750
			<hr/>
			5,000

Blk 4 East		5	500
1	1,500	6	500
2	1,250	7	500
3	1,250	8	500
4	1,250	9	750
5	1,250		5,000
6	1,250	Blk 6 East	
7	1,250	1	750
8	1,500	2	500
9	2,000	3	500
		4	500
	12,500	5	500
Blk 4½ East		6	500
1	750	7	500
2	500	8	500
3	500	9	750
4	500		
5	500		5,000
6	500	Blk 6½ East	
7	500	1	750
8	500	2	500
9	750	3	500
		4	500
	5,000	5	500
Blk 5 East		6	500
1	1,250	7	500
2	1,000	8	500
3	1,000	9	750
4	1,000		
5	1,000		5,000
6	1,000	Blk 7 East	
7	1,000	1	2,000
8	1,000	2	1,500
9	1,500	3	1,500
		4	1,500
	9,750	5	1,500
Blk 5½ East		6	1,500
1	750	7	1,500
2	500	8	1,500
3	500	9	2,000
4	500		
			14,500

Blk 7½ East		3	3,500
1	1,250	4	3,500
2	1,000	5	3,500
3	1,000	6	3,500
4	1,000	7	3,500
5	1,000	8	3,500
6	1,000	9	3,500
7	1,000	10	3,500
8	1,000	11	3,500
9	1,250	12	3,500
		13	3,500
		14	3,500
District No. 3		15	3,500
Blk 2 East		16	3,500
1	4,000	17	3,500
2	2,500	18	4,500
3	2,500		
4	2,500		
5	2,500		
		65,500	
		Blk 19 N. R. Smiths	
		1	3,500
		2	2,500
		3	2,500
		4	2,500
		5	2,500
		6	2,500
		7	2,500
		8	3,500
		9	4,500
		10	4,500
		11	3,500
		12	3,500
		13	3,000
		14	3,000
		15	3,000
		16	3,000
		17	3,000
		18	3,500
		56,500	
		Blk 20 N. R. Smiths	
		1	3,500

2	2,500
3	2,500
4	2,500
5	3,000
6	3,000
7	3,000
8	3,000
9	3,000
10	4,000
11	3,000
12	2,500
13	2,500
14	2,500
15	2,500
16	2,500
17	2,500
18	3,500

 51,500

Blk 30 N. R. Smiths

1	4,000
2	4,000
3	4,000
4	3,500
5	3,500
6	3,500
7	3,500

 26,000

Blk 29 N. R. Smiths

1	4,500
2	3,500
3	3,500
4	3,500
5	3,500
6	3,500
7	3,500
8	3,500
9	4,000

 33,000

Blk 28 N. R. Smiths

1	4,500
2	3,500
3	3,500
4	3,500
5	3,500
6	3,500
7	3,500
8	3,500
9	4,500

 33,500

Blk 27 N. R. Smiths

1	4,000
2	3,000
3	2,500
4	2,500
5	2,500
6	2,500
7	2,500
8	2,500
9	4,000

 26,000

Dist. No. 4

Blk 30 N. R. Smiths

10	2,500
11	1,500
12	600
13	600
14	500

 5,700

Blk 31 N. R. Smiths

14	2,000
15	3,000
16	3,000
17	3,000
18	4,000

 15,000

Clallam Lumber Company

Blk 54 Townsite		8	2,000
1	2,500	9	2,500
2	2,000	10	2,000
3	2,000	11	1,500
4	2,000	12	1,500
5	2,000	13	1,500
10	2,000	14	1,500
11	1,000		
12	1,000		16,500
13	1,000	Blk 69 Townsite	
14	1,000	1	1,500
15	1,000	2	1,500
16	1,000	3	1,500
17	1,000	4	1,500
18	1,000	5	1,500
		6	1,500
	20,500	7	1,500
Blk 55 Townsite		8	1,500
5	1,000	9	2,000
6	1,500		
7	1,500		14,000
Supplemental List of the North half of Blocks 1 and 2			
East and 1 West of Laurel St. Dist. 2			
Blk 1 West		6	3,000
1	4,000	7	3,000
2	3,000	8	3,000
3	3,000	9	3,000
4	3,000	10	4,000
5	3,000		
6	3,000		33,000
7	3,000	Block 2 East	
8	4,000	1	2,500
9	5,000	2	2,000
		3	2,000
	31,000	4	2,000
Block 1 East		5	2,500
1	5,000	6	2,500
2	3,000	7	2,500
3	3,000	8	3,000
4	3,000	9	4,000
5	3,000		
			23,000

We, the undersigned residents and property owners of Port Angeles, Washington, being conversant and familiar with the values of the property in said City, hereby certify that we have carefully appraised the several parcels of property shown on the attached list and to the very best of our judgment and belief the amount set opposite each parcel of property is the true and actual value thereof.

G. M. Lauridsen.

Robert D. Willson.

Samuel J. Lutz.

Julius I. Kirschberg, Pres. P. A. Commercial Club.

Thos. R. Aldwell.

A. A. Smith.

D. E. McGillivray.

S. W. Pearce, Secty. Com. Club.

Frank P. Fisher.

State of Washington, County of King—ss.

E. PIERSON being duly sworn, says: That he is a resident of the City of Seattle and that his profession is commercial photography. That on April 30, 1914 he made the photograph of a statement of real estate values in Port Angeles, Washington, entitled "Property Valuations", and attached hereto and that the same is a true and correct reproduction of the original furnished him by Mr. Earle of the firm of Earle & Steinert, Seattle, Washington.

E. PIERSON.

Subscribed and sworn to before me this 8th day of May, 1914.

(Seal)

DAN EARLE,

Notary Public in and for the State of Washington
residing at Seattle.

Indorsed: Plaintiffs Exhibit "E". Filed September 3, 1915.

PLAINTIFF'S EXHIBIT L
JOHN C. HANSEN, Port Angeles, Wash.
CLALLAM COUNTY
Board of County Commissioners.

Frank Lotzgesell, Jas. F. Clark, John C. Hansen,
Chairman.

Port Angeles, Wash., May 8, 1914.

Mr. E. H. Grasty,
Portland, Oregon.

Dear Sir:

Replying to your inquiry, why is there such a difference in actual valuations and assessed valuation on Clallam County property, you particularly refer to lots 15-16-17-18 Block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from \$9,000.00 to \$9,500.00. They are assessed on an average of \$700.00. I have been for the passed three years and am now a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place Port Angeles has always been a very quiet side tracked city, and it has always had and has now a population that has always had confidence in its future, that its location and large Timber resources must some day make a city of considerable size, for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the Assessor has always borne in mind that he could only assess such property according to what it ought to pay, without damaging the owner of none income property. During my time in office we have gone over the tax roll every year and always have upheld the Assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor, there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find that he has made raises for this year only in such places where he was compelled to do so on account of its selling value.

The above statement also holds good for lots in Block 20 Townsite of Port Angeles, lots in that block are worth from 3,000.00 to 3,250.00 and assessed at

about 300.00. I can take all over this city and show you that the same conditions exists in any part of the city and so long as the assessment is equal we are satisfied, so far we have always had enough revenue to pay running expenses, the only time this city run behind was in the early days before there was very much property to tax.

Hoping that the above information is as complete as you require and if not, that you will call on me for further information, I am,

Yours very truly,

J. C. HANSEN,

President Board of Equalization.

Indorsed: Plaintiffs Exhibit L. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT M

C. L. Babcock, Treasurer. S. E. Stakemiller, Deputy.

D. J. Kelly, Deputy.

OFFICE OF

TREASURER OF CLALLAM COUNTY.

Port Angeles, Wash., April 29th, 1914.

Mr. E. H. Grasty,

Portland, Ore.

Dear Sir:

In regard to the valuation placed upon the assessment rolls by the County Assessor for taxation purposes of Clallam County for the City of Port Angeles.

The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to any where near the true value of property at the present time their taxes would increase in like manner and the Assessor has been influenced by their attitude.

As a matter of fact nearly all the lots in Port Angeles are now upon the rolls at from 10 to 20% of their true value and consequently the tax levy is very high nearly to the limit in every taxing district.

Out of town investors are appalled at our high levy but if the valuations were raised to some-where near their true value and the levy reduced in accordance, I

think 'am sure our taxes would not look so high and would compare very favorably with other towns of like population of Port Angeles.

Very respectfully,

(Signed) C. L. BABCOCK,
Treasurer of Clallam County.

Indorsed: Plaintiffs Exhibit M. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT N

LEWIS LEVY,
Real Estate Broker,
Established 1888.

Port Angeles, Washington, April 29, 1914.

Mr. E. H. Grasty,
Portland, Oregon.

Dear Sir,

With reference to land and lot values in Port Angeles.,

1st, I wish to say that within the last two years values have doubled.

2nd, Our assessment of land values is made every two years, the last assessment being made in the year 1912.

3rd, We keep land values for assessment purposes down at extremely low figures, for the following reasons,

A. The state of Washington makes it's rate according to it's needs and takes a big slice out of our treasury, and we get nothing in return for same.

B. The same applies to our County, it comes in with a levy, and takes a lot of money from us, for which the City of Port Angeles gets nothing in return directly, hence we work dilligently to keep our assessed valuation of city property down, hence our assessment values are therefore not based on actual values whatever, we pay no attention to actual values when assessment for taxation purposes is made. The above statement solves the question of values.

I herein inclose the application of Mr. Meyer Krupp for a loan.

With reference to my corner as to an all cash proposition, my reason for all cash is this, I have other good locations in town, which I desire to build upon, and as I am reluctant to go into the market of borrowing money, hence I would rather give a fair discount on all cash proposition, my price is \$30,000.00 Cash, the purchaser to pay all improvement taxes, and pay for the raising of the buildings, which may amount to \$800 to \$1,000 and subject to the leases now on some of the buildings, which expire, July 1, 1915. The greater portion facing on Laurel Street, is not leased, about 80 by 85 feet, part of this I can lease immediately at a good rental. But this deal, if it is to be made, must be made on or before May 23, 1914 and a substantial deposit made on the property, in the Bank of Clallam County, here, on or before May 23, 1914. If you make the sale and the transaction is carried to a successful issue, you will receive Ten per cent commission for concluding the sale.

Very truly yours

LEWIS LEVY.

Indorsed: Plaintiffs Exhibit N. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT P

C. J. Farmer, President. J. P. Christensen, Cashier.
J. M. Lauridsen, V-Pres. Conrad Luppen, Asst. Cash.

CITIZENS NATIONAL BANK

of Port Angeles, Washington.

Port Angeles, Wash., April 29th, 1914.

Mr. E. H. Grasty,
Portland, Oregon.

DEAR SIR:

When in our bank we talked about Real Estate values here in the city and county, and you requested of the writer a letter setting forth my opinion on the subject.

Real Estate values here have doubled, in many instances they have trebled, since the last assessment for taxing purposes in 1912. The reason for this increase in values is due to an industrial activity and its

natural consequence, an influx of population of the county and city as well.

About a year ago the Chicago, Milwaukee R. R. system made overtures for railroad building into the peninsula, and have since let a contract for the construction of their road from a point on the Puget Sound to about 30 miles west of the city, work on this branch is now under way. Following close on the material evidence of a transcontinental railroad the Puget Sound Mills and Timber Company financed the erection of their large Mill plant with Peabody, Hotelling & Co. of Chicago to the extent of $1\frac{1}{2}$ Millions of Dollars; likewise the Olympic Power Company financed their big million dollar plant west of the city for supplying the cities of the peninsula with Light and Power. All of this have added materially to the wealth of the city and county and it has doubled our population.

Real estate values took a decided jump and in many instances property sold ten times as high as it had been selling for a year ago, but eliminating the question of boom values the writer may truthfully say that Real Estate values have doubled during the past two years.

It has been the custom in past years that the assessor of the county assessed property at a nominal value, or about 30% of the actual value of the property, accordingly I would estimate that present market values approximately would be six times the present assessed valuation of Real Estate for taxation purpose. This of course is meant in a general way and may not apply to each separate case.

I beg to remain

Very truly yours,

J. P. CHRISTENSEN,

Cashier.

Indorsed: Plaintiffs Exhibit P. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT F

Thos. T. Aldwell. D. L. Haggith.

Estates Managed

Investments Made for

Valuation Made

Non-Residents.

Rents Collected

Loans Negotiated

THOS. T. ALDWELL & CO.

Incorporated

Real Estate and Investments. Fire Insurance.

Surety Bonds. Head Office: Olympic Power Co.

Port Angeles, Washington April 29th, 1914.

Mr. E. H. Grasty,

Portland, Oregon.

Dear Sir:

Referring further to our conversation regarding the property values, etc. in this City, I am enclosing you a list of the valuations which is gotten up and certified to by both our Banks, and several other prominent citizens as being a fairly conservative valuation of the property in our business district. A committee was appointed and a list of values made for the purpose of getting as near as could be, the actual valuation of the property in this district, and the necessity for this was occasioned to a considerable extent by the fact that the assessed valuation on this property was so low that it was considered that it might work a hardship on the City in disposing of the improvement Bonds. The assessed valuations in this City have been kept down as low as possible for two reasons; first; to stop any too excessive improvement and, secondly; to save the extra proportion which we would have to pay, of the State and County taxes. The assessed valuation will be materially increased this year.

I am giving you this information as after thinking over our former conversation, I think it will be most interesting to you to know the real facts. In this connection, I might say that these improvement Bonds amounted to about \$200,000 and were slightly in excess of the assessed valuation but the Bond buyers carefully looked into the values of the property back of the Bonds, and after a thorough investigation, the Assets Financing Company purchased these bonds

for 96c. Peabody-Houghteling made an offer of 95c and probably would have given better, but the other people had secured the purchase. I understand that they have since resold these Bonds at a fair profit.

During the past two or three years, the values of the property in this City and vicinity have increased considerably but there has been a substantial reason for the increase. One reason being that the Olympic Power Company have installed a Hydro-Electric Plant, at a cost of \$1,350,000, with turbines and generators capable of a capacity of 8000 net electrical Horsepower. In this connection I am inclosing you a circular of Peabody-Houghteling & Company, describing the Bond issue which they took on this Plant, which gives a further description of it.

The Puget Sound Mills and Timber Company have just completed the construction of a mill which will cut 400,000 feet of lumber per day. The Insurance Surveyors who have just examined it, state that it is the best equipped mill on the Coast. This Mill alone will give employment to about 800 men directly and indirectly. Besides this Mill which has just been completed, the Merrill and Ring people, who are large lumbermen, and the Lacy people, who also have large holdings, are starting in to log their timber, and are seriously considering establishing mills at Port Angeles.

The Milwaukee Land Company, a subsidiary company of C. M. & St Paul, also have large holdings in this County, of which a great quantity of the timber will have to be sawed in this City.

According to Government reports and other reliable data, there are 60,000,000,000 feet of lumber in this County. The reason why the mills will have to build at Port Angeles is that logs can be delivered at Port Angeles at a saving of at least \$1.00 per thousand feet, as compared with the cost of transporting them to mills at Bellingham, Everett, or Seattle, and they will command the same freight rates as those shipped from Seattle, or other Sound Ports.

We have just succeeded in getting through Con-

gress, an Act granting to the City of Port Angeles, a ninety-nine year lease of the Spit, which will make two miles of factory sites which we will be able to lease at a nominal price. The details of this lease are being worked out now.

The Chicago, Milwaukee & St. Paul Railroad is now constructing a road East and West of the City, and they have assured Mr. Earles, of the Puget Mill Company, that the road will be completed 27 miles West of Port Angeles, before the first of July. They are also doing work on their eastern extension, but the work on this is not progressing as rapidly as on the Western division at this time, but our Citizens raised them a \$85,000 bonus to help in this construction, and also gave them a Right of Way, and their receiving the bonus requires them to have the eastern extension completed by January 1st next. Our citizens here also, I might add, donated a greater portion of the Puget Sound Mill site, raising locally \$35,000 for this purpose, which makes \$120,000 of a bonus which our young City raised, inside of two months. When this railroad is completed to its Eastern destination, which will be at first by way of ferrying to Seattle by either Oak Bay or Port Ludlow, and when completed it will help vastly in the development of our County.

The butter made by our creameries yearly, amounts to 1,400,000 lbs. and as you have no doubt seen by travelling over our County, that the ground is hardly yet scratched, and the improvement is going on very rapidly and this steady source of income will greatly increase within the next few years. The completion of the railroad will also make this Port the headquarters of the Fishing Industry as they will be able to tranship their fish here into the cars and save the time consumed in going to and returning from Seattle, and also the extra ice which would be required to make that trip, purchasing the ice and loading the fish on the cars here. This industry we believe, will materially assist in building up our town.

We also have added a great number to our population by reason of this being considered an ideal spot

to live. Our rainfall here being 29 inches, which is 25% less than Seattle rainfall. We have an ideal townsite; a very equitable and pleasant climate and being near the Olympic Mountains Lake Crescent and Sutherland, and Sol Duc Hot Springs, makes it very attractive for a home for people who are seeking a semi retired life, a great many people of this class have settled here, coming from western Canada and some our western States. By reason of the above mentioned reasons, and others which could be mentioned, our population has about doubled in the last two years, being now between 5,000 and 6,000 while according to the last census we only had about 2200. Every available house and also every store room is in use, and there are over 150 families living in tents and there is a demand for business locations which will cause the construction of several business blocks as soon as the grading is completed.

All tourists travelling to the Sol Duc Hot Springs have to tranship at Port Angeles. Last year these springs had a capacity of between 400 and 500 guests, and were filled up to their capacity during all the summer months, and these springs are rapidly growing in popularity.

Residence lots are worth from \$200.00 to \$1500.00 according to location.

Trusting this information may be of service to you, and if there is any other point upon which you desire information, you will please consider me at your service.

Very respectfully,

THOS. T. ALDWELL.

TTA/OB

Indorsed: Plaintiffs Exhibit F. Filed Sept. 3, 1915.

PLAINTIFF'S EXHIBIT CC
TREASURER'S VOUCHER LIST

.....Redeemed and Cancelled by County Treasurer,
from.....190.... to190....

Lot	Block	Assessed Valuation	Worth
Townsite of Port Angeles—			
4 and 5	276	180	800
5 and 6	380	170	600
8 and 9	338	160	600
9 and 10	189	70	400
7 and 8	141	60	350
16-18-19-20	437	85	400
Subs. of Townsite of Port Angeles—			
6	57 Leightons Sub.	230	950
E $\frac{1}{2}$ 16 all 17-18-6	P. S. C. C. Sub.	135	750
4	7 " " "	30	125
3	9 " " "	50	275
1 to 5-10 and 11	D Glovers "	165	700
Lot 7 Blk. Section 11			
" 12 Section 12. Township 28, North			
Range 15 West		740	1080
NW. SE. and SE. NW.			
Sec. 22, Township 30 North, Range 12			
West		425	640
		<hr/>	<hr/>
		2500	6670

Property of C. C. Henry, Port Angeles. Assessed
Value and also Mr. Henry's Appraisal.

E. H. GRASTY.

Indorsed: Plaintiffs Exhibit CC. Filed September 13, 1915.

PLAINTIFF'S EXHIBIT FF
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON. NORTHERN DIVISION.

Clallam Lumber Company, et al.,
Plaintiffs.

vs.

Clallam County, et al.,

Defendants.

No. 36 37 56 57
 PERSONAL PROPERTY ASSESSMENTS OF
 SHINGLE MILLS IN CLALLAM COUNTY,
 WASHINGTON.

PERSONAL PROPERTY

	1912		1914	
	Assessment		Assessment	
	Detailed List		Detailed List	
	No.	Val.	No.	Val.
Filion Mill & Lbr. Co.	309	\$4620	351	\$4365
	310	\$ 150	352	\$ 150
	311	\$3750	353	\$3750
		<hr/>		<hr/>
		8520		8265
Hanson & Glauert Shingle				
Co.	417	\$ 675	505	\$1060
Sturtevant & Pellerin	906	\$1425	1130	\$1475
E. R. Wait Shingle Co.	971	\$ 500	1204	\$ 700
Howell-Hill-Ray Shingle Co.	Not listed		501	\$1590
Skavdal Lbr. & Shingle Co.			1076	\$1500
Brown & Drury	Not listed		111	\$1200
Riverside Lbr. Co.	Not listed		996	\$1375
Puget Sound M. & T. Co. at Pt. Crescent				
Mason Mill Co.				\$ 700
McKee Box Factory				\$ 100
Superior Shingle Co.				
Eacreet Mill				
Port Crescent Shingle Mill				\$3260

Indorsed: Plaintiffs Exhibit FF. Personal Prop-
 erty Assessments of Shingle Mills in Clallam County.

PLAINTIFF'S EXHIBIT T
 IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE WESTERN DISTRICT
 OF WASHINGTON. NORTHERN
 DIVISION.

Clallam Lumber Company, et al.,
 Plaintiffs.

vs.

Clallam County, et al.,

Defendants.

No. 36 37 56 57

TABULATED STATEMENT OF REAL AND
PERSONAL PROPERTY ASSESSMENTS OF
OLYMPIC POWER COMPANY

REAL AND PERSONAL PROPERTY OF
PUGET SOUND MILLS & TIMBER COM-
PANY'S "BIG MILL" AT PORT ANGELES,
WASHINGTON

PERSONAL PROPERTY ASSESSMENT OF
THE BANKS OF CLALLAM COUNTY
OLYMPIC POWER COMPANY

Personal Property 1914

List No.	Total Val. as	Road Dist.	Sch. Dist.
	Equalized		
901	\$ 1760	c2	7
902	56280	2	46
903	1200	2	2
904	1200	2	7
905	400	2	300
906	1200	1	300
907	1200	1	53
908	1600	1	301
909	400	Sequim	3/302
910	1600	1	3/302
911	1600	1	11
912	1200	1	32

\$69640

DESCRIPTION OF LISTS

901	"4 miles"	902	
903	3 "	Work horses 6	650
904	3 "	Wagons 1	30
905	1 "	Prop. of x Light, Power	
906	3 "	xx service concerns	
907	3 "	including fran-	
908	4 "	chises	53100
909	1 "	All other items of	
910	4 "	pers. prop.	2500
911	4 "		
912	3 "		\$56280

33 " Total Val. \$13360

OLYMPIC POWER COMPANY

Sec. 15, Two. 30 North, 7 West		Plant in 15-30-7	
		Improve-	
		Land	Total
Olympic Power Co.	NW NE	\$270	270
	N $\frac{1}{2}$ SE NE		
	SE SE NE		
	E $\frac{1}{4}$ SW SE		
T. T. Aldwell	NE (35A)	280	280
Olympic Power Co.	SW NE	400	2000 2400
"	Lot 2	450	450
"	Lot 3	635	635
	E $\frac{1}{2}$ E $\frac{1}{2}$		
"	NW SW	340	340
	W $\frac{1}{2}$ E $\frac{1}{2}$		
Thos. T. Aldwell	NW SW	340	340
Thos. T. Aldwell	W $\frac{1}{2}$ NW SW	675	675
Olympic Power Co.	Lot 4	590	590
Olympic Power Co.	SW SW	850	850
		4830	6830
21-30-7			
Olympic Power Co.	NE NE	765	765
	S $\frac{1}{2}$ NE	1010	1010
	SE	1650	1650
	SE SW	640	640
22-30-7			
Olympic Power Co.	Lot 1	760	760
"	NW NW	665	6 65
	Lot 2	400	400
	SW NW	600	600
	NW SW	810	810
		7300	7300
1914 Rolls			
28-30-7			
		Olympic Power Co.	
	N $\frac{1}{2}$ NE	700	700
	W $\frac{1}{2}$ SE NE	80	80
	SW NE	400	400
	NE NW	365	365

	SW NW	315	315
	That part of NW SE W of Elwah River	200	200
	That part of SW SE W of Elwah River	100	100
33-30-7			

Olympic Power Co.

NE NW	300	300
SE NW	500	500
	<hr/>	<hr/>
	2960	2960

Total of Olympic Power Company's real estate assessments in Clallam County for 1914 \$13,795.00

1914 Rolls

PERSONAL PROPERTY

Puget S. Mills & T. Co.

Detail List		Road Dist.	Sch. Dist.
974	\$87450	C 2	7
975	880	2	5
976	690	2	5
977	7000	2	5
978	700	2	37
979	8335	2	5

Road Dist. C 1 down town and sub div. prop. in
Townsite

Road Dist. C 2 outlying parts of townsite (including
Mill)

DESCRIPTION OF LIST

List. No.

974

C 2 No. 7

Horses, 6	480
Wagons	50
Autos	400
Office furn. etc., etc.....	1000
Harness	20
Pile Drivers	500
S. S. Wallowa Rollo.....	5000
Shingles	1000

Goods and Merchandise.....	2000
Implements and mach.	75000
Lodging houses	1000
Water Service Concerns.....	1000

\$87450

TIDELANDS WEST OF LAUREL STREET

Blk.	1910	1912	1914		
Fr. 14	540 1000	1540 : 450	1500	1950 : 600	
Fr. 15	750	750 : 800		800 : 1400	
Fr. 16	725	725 : 650		650 : 1400	20,000 23,930
Fr. 17	200	200 : 100		100 : 150	
				300	

SAMPSON TRACTS:

Blk.						
D 10 A	1050 5000	1400 5000	7000 : 4500	13,000	17,500	
D	450	6500 : 600				
	150	200	700 : 1500		1,500	
E	450	600 : 500				
F	1500	1500 : 2000	2000 : 4500		4,500	
Vacated parts of R. R. Ave. between E line of						
Lot D & E, line K. St.						1,500

1912

Total Improvements	\$ 6500.00
Total Real Estate	6700.00

1914

Total Improvements	33000.00	
Total Real Estate.....	14430.00	15,930
	1500.00	

1914

Total of Real Estate of "Mill	
Property"	47430.00
	1500.00

48930.00

1910 Rolls

PERSONAL PROPERTY

Bank of Clallam County	
Total value of all personal property listed by	
assessor	\$3,000.00
Office Furniture	\$1,000.00
Capital Stock of Incorporated banks	2,000.00

1910

CITIZENS NATIONAL BANK

Total value of all personal property listed by
 assessor\$3,000.00

Office Furniture\$1,000.00

Capital Stock of Incorporated Banks 2,000.00

1912

BANK OF CLALLAM COUNTY

Total value of all personal property listed by
 Assessor, listed as capital stock of incor-
 porated banks\$3,000.00

CITIZENS NATIONAL BANK

Total value of all personal property listed by
 Assessor, listed as capital stock of incor-
 porated banks\$3,000.00

STATE BANK OF SEQUIM

Total value of all personal property listed by
 Assessor, listed as capital stock of incor-
 porated banks\$1,200.00

1914 Rolls

PERSONAL PROPERTY

Total value of all personal property listed by
 Assessor as capital stock of incorporated
 banks:

Bank of Clallam County.....\$3,000.00

Citizens National Bank 3,000.00

Port Angeles Trust & Sav. Bank..... 2,000.00

State Bank of Sequim..... 1,200.00

Indorsed: Plaintiffs Exhibit T. Filed Septem-
 ber 10, 1915.

Nos. 36-56-37-57

ASSESSMENTS, BANK STATEMENTS, AND
 EXCERPTS FROM TESTIMONY RELATIVE
 TO CLALLAM COUNTY BANKS

ASSESSMENTS ON BANKS OF CLALLAM
 COUNTY

1910 Rolls

PERSONAL PROPERTY

BANK OF CLALLAM COUNTY

Total value of all personal property listed by
 assessor\$3,000.00

Office furniture\$1,000.00

Capital stock of incorporated banks 2,000.00

1910

CITIZENS NATIONAL BANK

Total value of all personal property listed by
assessor\$3,000.00

Office furniture\$1,000.00

Capital stock of incorporated banks 2,000.00

1912

BANK OF CLALLAM COUNTY

Total value of all personal property listed by
assessor listed as capital stock of incor-
porated banks\$3,000.00

CITIZENS NATIONAL BANK

Total value of all personal property listed by
assessor listed as capital stock of incor-
porated banks\$3,000.00

STATE BANK OF SEQUIM

Total value of all personal property listed by
assessor listed as capital stock of incor-
porated banks\$1,200.00

1914 Rolls

PERSONAL PROPERTY

Total of all personal property listed by asses-
sor as capital stock of incorporated banks :

Bank of Clallam County.....\$3,000.00

Citizens National Bank 3,000.00

Port Angeles Trust & Sav. Bank.... 2,000.00

State Bank of Sequim.....1,200.00

EXCERPTS FROM TESTIMONY RELATING TO

CLALLAM COUNTY BANKS

BANK OF CLALLAM COUNTY

The average rate of interest on the loans of this bank is about 7%. (See Deposition of Mr. Lutz p. 96). The interest on warrants and bonds is 6%.

No real estate appears as listed in the sworn statement of this bank in either its report of 1912 or 1914.

The item of expense appearing in the report covers all expenses. (Page 97).

CITIZENS NATIONAL BANK

The average rate of interest earned by the bank

on its loans is about 8%. (Deposition of Christenson, p. 107.) On bonds and warrants 6½%.

In 1914 the bank paid a 20% dividend. (Page 108.)

REPORT OF THE CONDITION OF THE BANK OF SEQUIM

March 1, 1912

RESOURCES

Loans	27,313.00
Warrants	12,020.68
Banking House, Furniture and Fixtures....	3,980.00
Overdrafts	61.92
Cash on hand	2,619.72
National City Bank.....	1,561.05
Corn Exchange National Bank.....	227.69
Seaboard National Bank.....	131.50
Expenses	467.56
Interest paid	46.27

48,429.39

LIABILITIES

Capital stock	10,000.00
Surplus	850.00
Undivided profits	456.86
Deposits	31,630.65
Demand certificates	1,626.29
Time certificates	3,865.09

48,429.39

BANK OF SEQUIM

December 31, 1912

RESOURCES

Loans	30,140.00
Warrants	7,172.85
Bonds	1,570.25
Banking House, Furniture and Fixtures....	4,082.47
Overdraft	8.88
Real Estate Loans	5,385.50
Cash	4,776.30
National City Bank	16,160.70

Corn Exchange National Bank.....	1,361.75
	<hr/>
	70,658.70

LIABILITIES

Capital Stock	10,000.00
Surplus	1,000.00
Undivided profits	1,118.12
Deposits	51,041.15
Demand certificates	2,531.16
Time certificates	4,933.59
Certified checks	34.68
	<hr/>
	70,658.70

BANK OF SEQUIM

March 1, 1914.

RESOURCES

Loans	52,001.13
Warrants	3,857.39
Bonds	8,564.92
Banking House, Furniture and Fixtures....	4,012.50
Real Estate loans	7,325.00
Cash	1,726.64
Merchants Bank	857.42
National City Bank	6,768.24
Corn Exchange National Bank.....	766.22
Current Expenses	609.93
Interest	61.35
Overdrafts	312.97
Short accounts	3.15
	<hr/>
	86,866.86

LIABILITIES

Capital Stock	10,000.00
Surplus	2,000.00
Undivided profits	941.14
Deposits	64,595.36
Demand certificates	1,717.04
Time certificates	7,578.64
Certified checks	34.68
	<hr/>
	86,866.86

BANK OF SEQUIM

December 31, 1914

RESOURCES

Loans	40,687.50
Warrants	4,009.05
Bonds	6,300.00
Banking House, Furniture and Fixtures.....	3,900.00
Real Estate Loans	5,725.00
Cash on hand.....	5,285.18
Merchants Bank	1,077.43
National City Bank	2,560.67
Corn Exchange National Bank.....	1,425.66
Port Angeles Trust & Savings Bank.....	1,400.00
Overdrafts	47.11
	<hr/>
	72,417.60

LIABILITIES

Capital Stock	10,000.00
Surplus	2,000.00
Undivided Profits	906.41
Deposits	48,619.76
Demand Certificates	648.89
Times certificate	9,239.55
Savings Deposits	968.31
Certified checks	34.68
	<hr/>

Total 72,417.60

REPORT OF THE CONDITION OF THE BANK
OF CLALLAM COUNTY

March 1, 1912

RESOURCES

Due from Banks	80,514.04
Loans and Discounts	132,170.46
Overdrafts	1,253.31
Furniture and Fixtures	3,000.00
Bonds and Warrants	36,732.66
Interest Paid	496.22
Expenses	763.19
Cash	20,255.14
Cash items	372.69
	<hr/>
	275,557.71

LIABILITIES

Total deposits	245,476.97
Interest	2,035.20
Exchange	10.63
Surplus	3,000.00
Capital Stock	25,000.00
Cash over	39.91

275,557.71

BANK OF CLALLAM COUNTY

March 2, 1914

RESOURCES

Due from banks	136,488.49
Real Estate Loans	47,127.50
Loans and Discounts	176,751.58
Overdrafts	816.39
Furniture and Fixtures	2,400.00
Bonds	29,300.00
Warrants	27,207.34
Interest paid	804.34
Expenses	1,259.72
Cash	22,454.37
Cash items	1,729.10
Taxes paid	66.36

446,405.19

LIABILITIES

Total deposits	412,803.15
Interest account	2,887.08
Exchange	21.40
Surplus	5,000.00
Undivided profits	693.13
Capital Stock	25,000.00
Cash over .....	.43

446,405.19
REPORT OF THE CONDITION OF PORT
ANGELES SAVINGS & TRUST BANK

February 28, 1914.

RESOURCES

Loans and Discounts	6,301.17
---------------------------	----------

Warrants	1,802.14
Furniture and Fixtures	1,441.75
Due from Union Savings & Trust Co., Seattle	13,612.07
Due from Hanover National Bank, New York	997.00
Current Expenses	357.49
Cash on hand	8,791.73
	<hr/>
	33,303.35

LIABILITIES

Capital Stock	25,000.00
Interest	545.72
Total Deposits	4,757.63
	<hr/>
	33,303.35

REPORT OF THE CONDITION OF THE
CITIZENS NATIONAL BANK

At Port Angeles, in the State of Washington at the
close of business on the 1st day of March, 1912

RESOURCES

1. Loans and discounts on which officers and directors are not liable as payers or indorsers	70,678.65
2. Overdrafts	979.74
3. U. S. Bonds to secure Circulation (par value)	6,250.00
Stocks, securities, etc., including premi- um on same	40,837.13
Banking House; furniture and fixtures....	1,653.51
Due from National Banks (not ap- proved Reserve Agents)	31,847.31
Legal-tender notes	13,876.05
Redemption Fund with U. S. Treasurer (not more than 5 per cent on Circu- lation	312.50
	<hr/>
Total	\$166,434.89

LIABILITIES

Capital Stock paid in	25,000.00
Surplus Fund	5,000.00

Deposits, et al. 129,028.73

Total 166,434.89

REPORT OF THE CONDITION OF THE
CITIZENS NATIONAL BANK

At Port Angeles, in the State of Washington at the
close of business on the 1st day of March, 1914.

RESOURCES

Loans and Discounts	111,055.99
Overdrafts	402.19
U. S. Bonds	6,250.00
Stocks, securities, etc.	80,575.09
Banking House, Furniture and Fixtures....	2,019.10
Due from National Banks	22,630.73
Lawful money reserved	24,108.42
Redemption fund	312.50

Total \$247,354.02

LIABILITIES

Capital Stock	25,000.00
Surplus	5,000.00
Undivided Profits	2,875.71
Circulating Notes	6,250.00
Deposits, et al.	208,228.31

\$247,354.02

Indorsed: Summary of Statement of Banks of Clallam
County.

Filed December 11, 1915.

Nos. 36 and 56

Nos. 37 and 57

MEMORANDUM DECISION

Filed Jan. 22, 1916

CUSHMAN, District Judge

The four above entitled causes were tried together. They were brought to have the assessment, for the purposes of taxation, made by Clallam County upon the lands of plaintiffs decreed void, and defendants enjoined from collecting the same. Causes Nos. 36 and 37 involve the assessments for the year 1913, and causes Nos. 56 and 57 concern those for the year

1914. The causes are the same in all material respect. There is little controversy concerning the law applicable to the cases, the questions involved being mainly of facts.

Plaintiffs aver that the assessments are void because the timber lands in the eastern part of Clallam County have been, by the assessor, for assessment purposes, arbitrarily laid off—in disregard of the actual value of the lands therein—in certain zones and a fixed value throughout each zone given the different kinds of timber therein.

The assessments are further attacked on account of alleged fraud upon the part of the assessor and Board of Equalization, the substance of the charge in this respect is:

That the Western part of the county is almost entirely timber land owned by non-residents; sparsely settled and containing few voters; that Port Angeles is the county seat and that the bulk of the voting population lives in the central and Eastern part of the county where there is less timber land; that the assessor and other members of the Board of Equalization—save one—are residents and property owners of the central and Eastern part of the county; that it has been the custom to assess property at less than its actual value; that the officers of Clallam County claim to have assessed at fifty per cent of the true value, but that plaintiffs' lands were assessed much higher than fifty per cent—approximately, eighty-four per cent of their full value, while other property of the county was assessed at much less: at Port Angeles from ten to twenty per cent and the farming land in the Eastern part of the county from twenty-five to thirty per cent. (These figures are taken from one of the complaints concerning the 1914 taxes, but do not differ substantially from the complaints in the other suits.) That the overvaluation was not accidental and unintentional, but wilful and in pursuance of a corrupt conspiracy between the assessor and the County Board of Equalization that, for the purpose of ingratiating themselves with the voting population of the Eastern and

central part of the county, they agreed to, and did, increase the assessments upon timber lands in the Western part of the county and decreased that of property in the center and Eastern part thereof, in the former case above, and the latter below, its proportion of the true and fair value of the property in the county; that a further purpose of such conspiracy was to compel the building, by plaintiffs, of mills at Port Angeles, where a majority of the voters live, and the commencement of logging and lumber operations, thereby adding to the growth of that town, in which a majority of the Board of Equalization own property; that the values fixed by the assessor are the result of such conspiracy and do not represent his judgment; that, for the same reason, plaintiffs' protests were arbitrarily disregarded; a fair hearing before the Board of Equalization denied and the assessments approved by such Board as a matter of course.

The material allegations of fraud are put in issue by the answer of the defendants.

Plaintiffs are the owners of a considerable body of timber land in the Western part of Clallam County, almost 50,000 acres. No railroad has as yet penetrated this section and no logging operations have yet been carried on there. The county has caused the timber lands therein to be cruised and the amount of timber—fir, spruce, cedar and hemlock—standing on the different tracts to be determined. The correctness of this cruise is not attacked.

Clallam County lies between the Straits of Juan de Fuca on the North and the Olympic Mountains on the South. It extends along the Straits about eighty miles. The greater part of the remaining standing timber is in the Western part of the county. The lands of plaintiffs are from thirty to fifty miles West of Port Angeles, the county seat; from eight to twenty miles from the Straits and from six to twenty miles from the Pacific Ocean.

A railroad extends from Port Angeles westward about half the distance to plaintiffs' lands. The nearest

railroad from the south, along the shores of the Pacific, is sixty miles distant.

These timber lands lie in the bottoms and on the benches of the Sol Duc and Calawa Rivers. The waters of these rivers run in a southwest direction to the Pacific. There are no booming grounds or harbors on the Pacific to the Westward of these lands and, at present, but small facilities of that nature on the Straits of the North, although a booming ground is being developed by the owners of other timber lands at the mouth of the Pysht River, which, at present, appears to be the best way to get this timber out to market. A range of hills separates the land from the Straits. An available pass in these hills is of the height of 250 feet.

The assessor, for the purpose of determining the value of the lands, as affected by the amount and character of the cruised timber thereon, fixed certain zones. Three of these zones lie along the Straits and one upon the shore of the Pacific and extend back from the shore from four to six miles. The other zones lie to the interior. The boundary dividing the zones on the Straits from those on the South follows section and, in some instances, township lines; but it roughly follows the height of land between the waters flowing to the Straits and those southwest to the Pacific.

The nearest milling and developed harbor facilities, at present, are at Port Angeles.

In the Straits zone nearest this town, which extends twelve miles West of it, in 1914, fir, spruce and cedar were valued by the assessor at \$1.00 per thousand and hemlock at 40c. In the Straits zone to the West of this zone, which extends some thirty miles along the Straits, the values were fixed by him at 90c and 40c. In the three zones to the South of the Straits zones, the values were fixed at 80c and 30c; 50c and 25c; 80c and 40c, while in the last of these zones, which I will designate as "Zone 1," for the reason that it is so numbered on certain of the exhibits, the values, taken together, are higher than either of the other

interior zones, despite the fact that plaintiffs' lands therein are further from Port Angeles and the Straits than the surveyed lands in either of the two zones last mentioned, yet the evidence shows the standing timber is thicker and the contour of the ground better for logging operations than in the other two zones.

In Zone 1, the timber lies along the Sol Duc and lower Calawa Rivers, both flowing to the Pacific. To the South and East of Zone 1, upon the upper Calawa is another zone in which conditions are generally the same as in Zone 1. In this zone values are fixed at 70c and 30c, as against 80c and 40c in Zone 1. But, in taking the timber from this latter zone, if taken to the Pacific, it would have to be taken farther than that in Zone 1. If taken out North, to the Straits, it would have to be taken over a divide separating the Calawa and Sol Duc.

It is apparent that all the foregoing conditions, as well as the amount of timber on the lands, were taken into account in creating these zones. While in one sense it may be said that the boundaries of the zones were arbitrarily fixed, in that a tree immediately upon one side of the boundary could not be said to be more valuable than one immediately upon the other, yet in principle it is not more arbitrary than to assess a man's farm at an even value per acre, disregarding possible differences therein. Plaintiffs' witnesses testified that the Merrill & Ring timber in the coast zone was worth twice as much as plaintiffs' in the two interior zones. This would indicate that there was, to their minds, such a difference as would warrant zone making. What the bounds of the zones should be, how large they should be made and the values to be given the timber in each would be matters of opinion.

I find that the creation of these zones was not unreasonably arbitrary.

C. B. & Q. Ry. Co. v. Babcock, 204 U. S., 585;
Doty Lbr. & Shingle Co. v. Lewis Co., 60
Wash., 428;

Simpson Log. Co. v. Chehalis County, 80 Wash.,
245 at 248.

In the first case above cited, it is said:

“Among them (the arguments on appeal) is the suggestion of arbitrariness at different points, such as the distribution of the total value set upon the Chicago, Burlington & Quincy system, among the different roads making it up. But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so.”

The greater part of plaintiffs' lands lie in the last two mentioned zones. To the North of these lies the middle one of the Straits zones and the one which contains the most of the Straits timber. As shown above, the timber in this zone is assessed at 90c and 40c, which plaintiffs complain is a grossly insufficient increase upon the values put upon their lands.

A great deal of testimony was given upon this question. The number of expert witnesses giving opinions as to values were about evenly divided as between plaintiffs and defendants. Those of defendants may have been shown to have had a greater interest in the cause than plaintiffs', yet those of defendants showed a greater knowledge than plaintiffs' of the lands and timber in question.

The interior timber is further from the Straits than the other, yet the fact that there are but two places on the Straits suitable for booming ground, necessitates a movement for a considerable distance of the greater part of the timber in the Straits zone. It is shown that a great part of the cost in logging is in getting logs upon a logging railroad and, on account of the greater number of ravines and ridges in the Straits zone, logging would be more difficult and with greater waste than in the case of plaintiffs' timber growing upon better ground.

In this respect it is far from clear that plaintiffs were unfairly discriminated against in this particular. Certainly, there is not that clear and certain proof of fraud required.

The plaintiffs mainly depend, to establish fraud in the assessment, upon certain admissions, alleged to have been made by the assessor and members of the Board

of Equalization. A certain Mr. Grasty was in Port Angeles a number of times from February to May, 1914. Mr. Grasty was sent by the plaintiffs to Clallam County, before these suits were begun, to investigate the assessments.

He represented to the people of Port Angeles that he was the agent of financial interests considering the advisability of loaning \$40,000, to build an Elks Lodge building in Port Angeles, and that he and his principals were generally interested in real estate loans. Uniformly, the conversations he had with those interested in seeing these lands made were brought around to the point where the value put on the property by such interested persons was contrasted with the assessed valuations and such persons were then asked, by Mr. Grasty, to explain and justify the difference.

Mr. Grasty and a friend of his by the name of King, whom he brought with him from Portland, had a talk with Hallahan, the assessor, in May, 1914, in which Grasty asked him to explain the discrepancy between the actual value of property in Clallam County and the assessed value. Mr. Grasty testified that Hallahan said:

"Well, we grade the property in the county, and assess it accordingly. Now, we assess timber in the county more than we do anything else."

When asked why, he said:

"x x the reason they assessed the timber higher than they did anything else was because on account of the great fire protection in this state; that the timber owners were holding their timber there, and that they assessed that high taxes in order to make them operate; in other words, to build logging roads and cut their timber."

and, further, the reason they kept their local (Port Angeles) taxes down low was for the purpose of depriving the state and county of taking away from Port Angeles proper any more money than they could possibly help. Also, that it wouldn't do the timber people any good to complain, they were going to be assessed, because they never would operate in Clallam County,

and that the people had lived there so long, unless the people cut their timber, they would always remain in the dormant state that they had been before.

Grasty was corroborated, generally, as to these conversations by King, with one important difference; Grasty testified that Hallahan said:

"Mr. Grasty, if I were to assess the property here (in Port Angeles) for *FIFTY PERCENT*. of its real value, I would break every property owner in Port Angeles and I have been sworn to do my duty."

Mr. King testified that Mr. Grasty asked the question:

"I want to know what the assessed value of Port Angeles property has to do with the real value." to which Hallahan replied:

"x x the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed according to its *REAL VALUE*, it would break some of the property holders to pay the taxes."

Hallahan, although asked for a letter by Grasty, made no written statement and contradicts the testimony of Grasty and King. He testified as follows, concerning their statements:

"A. I can't remember the date nor the month that he paid the visit to my office in the forenoon. He handed me his business card and told me that he represented capitalists in Portland, Oregon, and had come down to Port Angeles with the intention and expectation of loaning money to the Elk's Lodge, some forty thousand dollars, to erect a building. He talked along a little while and said further that there appeared to be a vast difference between the assessed value of the property which belonged to the Elk's Lodge and the value placed thereon by the committee of the Lodge.

"THE COURT: By whom?

"A. The lodge committee. I believe he had an appraisal made by that committee, what purported to be an appraisal made by the committee, in his possession; I don't remember, but I believe he had; and he also, either at that time or a subsequent time, had an appraisal made by Mr. Lutz, the cashier of the Clallam

County Bank, and I believe Mr. Christensen, of the Citizens National Bank, at that time, which showed a lower appraisal of the same property.

"Q. A lower appraisal?

"A. A lower appraisal than that placed thereon by the Elk's Committee, on the same property the bankers placed a lower appraisal. Mr. Grasty seemed to be very enthusiastic about the placing of this loan, and discussed the assessments with me. He inferred that the assessments were very low as compared with the appraisal and that it would be very hard for him to explain to his people down in Portland the difference which appeared to exist, and suggested that I write a letter explaining the situation and send it to Portland, Oregon, to his address. He did not want the letter there at all, although he said in his testimony the other day that I promised to hand it to him in the afternoon. He did not want the letter; he wanted it sent to Portland to his own address.

"Q. Did he say that to you?

"A. Sure he said that to me. That made me suspicious then. I says 'What kind of a concern do you represent that they have not your confidence? I says, 'You could not work for me but a short time if I had only that much confidence in you'. And I got suspicious of the fellow right away. He stumbled around the office all forenoon until pretty near noon time, and he got in my way until he became a nuisance around there. We went to the books on the desk and he looked at the assessment for 1912. The 1914—I did not place here—it was in April, I presume when he was in the office, but I had not commenced to place the assessment of the city of Port Angeles for the year 1914, and consequently did not tell him what that assessment would be, because I had not the figures finally placed myself. He stumbled around the office until about noon time, when he invited me to dinner, which invitation I refused. I got suspicious of the fellow and I thought he was too nice to me and too good to me for my own good. He was all smiles and very bland around there, and at the noon hour I went down

on the principal street, the corner of Laurel and Front Street, and I met Mr. Fisher, who he has referred to in his testimony, Frank Fisher. He is deputy collector of customs down there. I knew Mr. Fisher was an Elk, and I told Fisher what this gentleman was saying to me in the office—I told him about his asking me for a letter, and just about that particular minute, he seemed to be watching us, and around he come and butted in to us again.

“Q. Who do you mean, who was this that butted into you?”

“A. This gentleman down here with the gray suit on that gave testimony here.

“Q. Mr. Grasty?”

“A. Mr. Grasty, yes, sir, that is the name of the man who butted into us again, and Mr. Fisher says ‘Hallahan can’t give you any such letter,’ and then finally he passed on after interfering with our conversation for some time, he passed along, and Mr. Fisher told me, he says, ‘Jack’, they call me Jack down there a lot, he says, ‘Jack, that fellow is no good. We have investigated him and he is no good; don’t bother with him no more’. Mr. Fisher told me right there. I did not bother with him any more. I believe that he did come up that afternoon, or the following day at the office again and bothered me some more about this letter, and he did not get no letter at no time, nor did I promise to give him a letter at any time. So, a week or two elapsed, and I, at least, had forgotten all about him, and I went down to dinner—I believe it must have been two or three weeks afterwards—and instead of turning to the West to where I usually eat luncheon, I turned to the East. I can’t account for the fact now, and there was a high concrete wall erected at that time as a bulkhead in the grading district, and Mr. Grasty was standing in the sunshine with another fellow, as I went up he rushed right out and grabbed me by the hand and he says: ‘Hello, Mr. Hallahan, I am glad to meet you’, smiling all over his face, and he introduced Mr. King to me as being the son of one of the financiers in Portland, Oregon. Mr.

King did not impress me as being a financier at the present time. He was not very well dressed, and as far as outward appearances went, would not be a very good looking financial agent. He invited me to dinner again. I believe this was the third time he invited me to dinner. He was bound to have me to dinner, and I had learned by this time from what I had heard that the fellow was no good, and I went along with him to dinner. He grabbed hold of me and I went along and talked about commonplace things during the noon hour, and we come back on the street again, and he would all the time inject this loaning of money to the Elks Lodge. He tried to inject that into the subject of our conversation all the time, and would mention occasionally about the low assessment and the high appraisal put on there by the committee and that letter, that was his story all the time. I believe in the afternoon that he did go back up to the office again to discuss matters further with Mr. King, and that is about the end of the Grasty proposition, so far as I can remember. x x x

"Q. Now, in the conversations that were had between you and Mr. Grasty who led the conversation?

"A. Why he led the conversation.

"Q. Who directed the channels into which they should flow?

"A. He directed them all the time.

"Q. What channels did the conversations always follow?

"A. It followed the subject matter of the loan of forty thousand dollars to the Elks to erect a building.
x x x

"A. He wanted me to write a letter down to Portland to his address stating that the assessment was low and that the appraisal by the committee was nearer right, something to that effect, I believe he wanted me to say that.

"Q. What did you say to him in reply to his suggestion as to making statements of that sort in a letter?

"A. I told him he could not get any such letter from me, he could not or anybody else.

On Cross-Examination, he testified:

"Q. Did you tell him that it was not a fact that the assessed value differed so much from the real value?

"A. I did not know what the real value of their property was at that time; why should I answer such a question in such a way. I did not know what the real value of that property was. x x x

"A. There may have been a difference between the assessed value and the real value, at that particular time, because he was looking at the 1912 assessment, and this was the year of 1914. x x x

"Q. Didn't you tell Mr. Grasty in the presence of Mr. King substantially that it had been the custom of the assessor of Clallam County to assess the timber lands high in order to force the owners of timber lands to operate?

"A. No, sir, I did not; nor anybody else in Clallam County, nor the State of Washington.

"Q. Or substantially that?

"A. No, sir; I did not say that to Mr. Grasty, or to anybody else.

"Q. You never said that to him?

"A. During my term of office to anybody, to any individual living or dead, no sir, I did not."

Mr. Grasty had several talks with Mr. Hansen, the Chairman of the Board of Equalization—a member of the Board from the central district—who was also a member of the Finance Committee of the Elks Lodge, and testifies concerning them, as follows:

"I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Hansen stated to me:

" 'Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local people we keep these assessments down. We have made it a rule to keep the assessments down, the taxes of Port Angeles property.'

"He said to me: 'We have a lot of timber stand-

ing in this county, owned by eastern interests', and he said: 'It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles.'"

Hansen also gave Grasty a letter, reading as follows:

"Port Angeles, Wash., May 8, 1914.

"Mr. E. H. Grasty,

Portland, Oregon.

Dear Sir:—

Replying to your inquiry, why is there such a difference in actual valuation and assessed valuation on Clallam County property, you particularly refer to lots 15-16-17-18 Block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from \$9,000.00 to \$9,500.00. They are assessed on an average of \$700.00. I have been for the passed three years and am now, a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place Port Angeles has always been a very quiet side tracked city, but it has always had and has now a population that has always had confidence in its future, that its location and large Timber resources must some day make a city of considerable size, for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the Assessor has always bourn in mind that he could only assess such property according to what it ought to pay, without damaging the owner of none income property. During my time in office we have gone over the tax role every year and always have upheld the Assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor, there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find, that he has made raises for this year only in

such places where he was compelled to do so on account of its selling value.

"The above statement also holds good for lots in Block 20 Townsite of Port Angeles, lots in that block are worth from \$3,000.00 to \$3,250.00 and assessed at about \$300.00. I can take all over this city and show you that the same conditions exists in any part of the city and so long as the assessment is equal we are satisfied, so far we have always had enough revenue to pay running expenses, the only time this city run behind was in the early days before there was very much property to tax.

"Hoping that the above information is as complete as you require and if not, that you will call on me for further information, I am,

Yours very truly,

J. C. Hansen,

President Board of Equalization.

Concerning this alleged conversation and the letter, Mr. Hansen testified:—

"Q. In Mr. Grasty's testimony he says: 'I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Mr. Hansen stated to me', 'Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and without local people we keep these assessments down. We have made it a rule to keep these assessments down, the taxes of Port Angeles property.' He said to me, 'We have a lot of timber standing in this county, owned by eastern interests.' And he said, 'It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles'. What have you to say regarding any such purported conversation?

"A. That is nearly all false, absolutely false.

"Q. What, if any, conversation did you have with Mr. Grasty, concerning non-resident owners of property, and the big timber interests?

"A. Well, I will explain. I am hard to catch.

I am very busy all the time, and a man catches me generally about five minutes, and seven minutes, and ten minutes, and all the talk we have had was about the proposed building, because all of his business was with the finance committee, and he came rushing up to me in the office whenever he could catch me, and was after that letter, and then in order to get rid of the matter as quick as I could, because, like I told you, I have to go out to different places here and there at all times, and I drafted that while he was right in my presence and the matter was disposed of, and I had really forgotten all about it. Neither did I mention to Mr. Babcock at all that I had written such a letter until I heard it was here in Court the other day, or Mr. Hallahan. There was never no conversations between us that I had given any letter to Mr. Grasty. That is as little thought as I had ever given the matter.

“Q. Regarding this alleged conversation between you and Mr. Grasty concerning non-resident property owners and the large timber interests in Clallam County?

“A. That was never mentioned.

“Q. That was never mentioned?

“A. No, sir: we did not even have time to mention it.

“Q. What was your purpose or object in writing this letter to Mr. Grasty?

“A. Entirely for the purpose of receiving the money for the proposed building. We all did all we could, every one of us that was interested; and it would have been a good loan if he would have made it.”

In 1912, Darwin, a newspaper reporter interviewed Hansen. Concerning this interview, Darwin testifies:—

“Here is the position Mr. Hansen took. He took the position that the timber men had been getting a smaller cruise; that they returned their timber at less per thousand than there was actual timber on the land; that they had recruited that, and had thereby increased the number of thousand feet, or whatever it was, to the holders, and it jumped up. I forget now; I haven’t

read the whole article, but that it jumped from sixty to eighty a thousand, or forty to eighty thousand, or something like that; but it had largely increased the per thousand to the acre, or whatever it was, and that his idea was that they should be—they should also increase their tax rate on that, and this would enable them to build roads and highways and develop their County, and also force the cutting of the timber or the sale of the timber to other parties.

Concerning his conversation with Darwin, Hansen testified:—

“Q. Mr. Hansen, were you in the court room the other day when Mr. Darwin testified for the plaintiff in this case?

“A. I was.

“Q. You heard his testimony?

“A. I did.

“Q. Mr. Darwin said in substance that in an interview with you, in Port Angeles sometime in the spring of 1912, that you said to him that you favored the policy of taxing timber holders so high that they would find it unprofitable to long keep their vast tract off of the market; will you state just what transactions and conversations you had with Mr. Darwin at that time?

“A. Well, I got a telephone message from the Secretary of the Commercial Club that Mr. Darwin was coming to the city on a certain day, and that I was appointed, with E. A. Fitzhenry, who is now United States Surveyor General for the State of Washington, and M. K. Meade, who was then Mayor of the City of Port Angeles.

“MR. PETERS: The plaintiffs make objection to any statement by Mr. Hansen except in answer to the question as to whether he did or did not make a statement imputed by him by Mr. Darwin, and any other inquiry is incompetent, immaterial and irrelevant.

“A. We three were to take Mr. Darwin around and show him the country. So we took an automobile that morning, whatever date it was I do not know, and we started for Lake Crescent; that is in a southwesterly

direction from Port Angeles, and twenty miles away, and on the way we stopped at the Olympic Power Company, which at that time was being built on the Elwah River, the roads to Lake Crescent were not in a very good condition; so the question of roads did come up, were spoken about, and then Mr. Fitzhenry, who has been all over the County many times as an engineer, and so forth, he was telling Mr. Darwin that this County had sixty billion feet of timber. Then the question was referred to me, why we did not have better roads. I told Mr. Darwin that we expected to bond the County that very same fall for three hundred thousand dollars, if it was possible, and about the timber I told him that we had a very small portion of that sixty billion on our tax rolls, and at that time the County had already started to cruise all of the timber and that we had a large portion of logged off land directly west of Port Angeles, on the way to Gettysburg, and Port Crescent, and that timber there in that direction belonging to Michael Earls had all been moved without a proper cruise having been against it, and that even the logged-off land would be so cruised that the County Assessor's office would have a perfect record of every ten acres and that the same policy would extend through the whole County to the Eastern line, farming land and all. And I explained to him then that in 1911 we had attempted to make some raise by the Board of Equalization, but that we were continually confronted with one man saying that this land was good for nothing, and the other man saying it was worth ten or fifteen dollars an acre, so we were absolutely unable to do anything without a better record. And the result of that cruising has placed now the county in such shape that —

“Q. What did you say to him about the cruise? This is a part of your conversation with him?

“A. Yes, sir, that everything was at that time underrated, because the assessor's office was in a poor condition at that time. I do not know what I said there, but I did not say that anything would be fixed higher than any other article, that this cruise was pur-

posely being made for the purpose of equalizing the taxation all over the County. That is about all. I was in the front seat and Mr. Darwin, and Mr. Fitzhenry and M. K. Meade were in the back of the automobile, and the trip took from morning until noon. We came back in time to have our dinner in town at the Commercial Hotel. * * * *

On cross-examination, he testified:—

“Q. Do you recall what this statement of Mr. Darwin, the present fish commissioner of the State, was: ‘Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to longer keep their vast tracts off the market’?”

“A. Our work does not bear that out. Our assessment roll does not bear that out.

“Q. I will ask you whether Mr. Darwin in making that statement in the Times newspaper two days after that interview, as testified, stated the truth, or stated what was false?”

“A. He wrote that.

“Q. That is what he said?”

“A. I didn’t write it.

“Q. I ask you if when he stated that in the paper and stated it on the witness stand here whether he was telling what was true, or whether he was telling what was false?”

“A. His expression there is false, when he says that I favored taxing timber so high—does he say that “they will have to operate it and cut it?”

“Q. I am reading it to you in his exact words, “‘Hansen favors the policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market.’”

“A. That is not true.

“Q. Isn’t the substance of it true?”

“A. No, sir; at no time did we go that far, and at that time I did not know enough about timber. I was a new man on the board, and I was learning.

Q. Didn’t you propose to assess the timber high?

A. No, sir, not high.

Q. At what did you propose to assess it?

A. Equally.

Q. Equally.

A. In 1912—I left it entirely to the assessor.”

Mr. Babcock, the County Treasurer and a member of the Board of Equalization, gave Mr. Grasty a letter reading as follows:

“Port Angeles, Wash., April 29, 1914.

“Mr. E. H. Grasty,
Portland, Ore.

Dear Sir:

In regard to the valuations placed upon the assessment rolls by the County Assessor for taxation purposes of Clallam County for the City of Port Angeles.

“The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to any where near the true value of property at the present time their taxes would increase in like manner and the Assessor has been influenced by their attitude.

“As a matter of fact nearly all of the lots in Port Angeles are now upon the rolls at from 10 to 20% of their true value and consequently the tax levy is very high nearly to the limit in every taxing district.

“Out of town investors are appalled at our high levy but if the valuations were raised to somewhere near their true value and the levy reduced in accordance, I think ’am sure our taxes would not look so high and would compare very favorably with other towns of like population of Port Angeles.

Very respectfully,

C. L. Babcock

Treasurer of Clallam County.”

Mr. Babcock, in his testimony, admits writing the letter and admits the truth of the greater part of its contents; but denies the truth of others, testifying:—

“Q. Now, you say in that letter ‘The people of Port Angeles have been afraid of high taxes and believe that if the valuation of former years was raised to anywhere near the true value of the property at the present time, the taxes would increase in like

manner and the assessor has been influenced by that attitude', was that true or was it false?

"A. I think that was largely false. I do not believe that is true. It was true to this extent: that we had just had a flurry and a few lots had been sold extremely high, and I honestly believed at that time that those values were going to continue, perhaps.

"Q. I am not asking you 'perhaps', you did not understand me.

"A. I guess not.

"Q. At the time that you made that statement on April 29, 1914, was it to your knowledge and conscience true or false? * * * * *

"A. * * I think that was true. I think I believed it was true.

"Q. At the time? A. At the time.

"Q. As a matter of fact, then you did believe on the 29th day of April, 1914, that the people of Port Angeles up to that time had been afraid of high taxes?

"A. Yes, sir.

"Q. And that they had up to that time believed that if the valuation of former years was raised to anywhere near the true value of property at that time, namely, April 29, 1914, that their taxes would increase in like manner and that the assessor had up to that time been influenced by their attitude, you believed that, did you?

"A. I think so.

"Q. And that was true, was it not, at that time?

"A. I thought so at that time.

"Q. How did you think at that time that the assessor had been influenced?

"A. I did not know.

"Q. What effect did that have upon him, these facts you read about?

"A. I presume to keep the valuations down.

"Q. That is, that your view of it at that time was that these facts presented to the mind of the assessor had influenced him to keep the values in Port Angeles down? * * *

"A. I think so, yes sir.

"Q. You thought so then?

"A. Yes, sir.

"Q. You have since found that it was not true?

"A. That what you stated in that way was not true.

"Q. You haven't since found that it was not true * * * That the assessor had been influenced by public opinion to keep the facts (taxes) down upon Port Angeles property?

"A. I don't think so, now.

"Q. You don't think so now?

"A. No.

"Q. You have changed your mind since April 29th, 1914.

"A. Yes, sir.

"Q. What made you change your mind?

"A. The assessment of 1914. * * *

"Q. How did the assessment of 1914 make you change your mind as to something that had already passed?

"A. It had not passed. I had no knowledge of what the assessment of 1914 was on the 28th of April.

"Q. You mean they changed the method of assessment, or rather, the basis of assessment in 1914?

"A. I did not change it. The assessor changed it, and I had no knowledge of it at the time.

"Q. But you did believe at that time and still believe at this time that up to the assessment of 1914 the assessor had been influenced by this public opinion that is referred to here?

"A. Well, possibly, to a certain extent.

"Q. And as you state in the letter?

"A. Yes, sir.

"Q. Now, then, you say: "As a matter of fact, nearly all the lots in Port Angeles are now upon the rolls at from ten to twenty per cent of their true value.' Is that true or false?

"A. It is false.

"Q. Was it true at the time you uttered it, or was it false?

"A. It was false.

"Q. Did you know that it was true at the time you uttered it on the 29th of April, 1914, or did you know that it was false?

"A. I did not believe that that was true.

"Q. Then you knew it was false?

"A. Yes, sir.

"Q. And you further say 'And consequently the tax levy is very high, nearly to the limit in every taxing district.' Was that true or was it false?

"A. In the County?

"Q. No, you say in Port Angeles?

"A. That was true. * * *

"Q. You believed that the assessments then, were below their true value?

"A. Yes sir.

"Q. In 1913?

"A. Yes, sir.

"Q. And that if they were raised to anywhere near their true value that the people would be appalled at the levy?

"A. If the levy was kept the same. * * *

"Q. And you have said that the assessments were not as low as from ten to twenty per cent of the true valuation of property in Port Angeles?

"A. Yes, sir, I believe so.

"Q. Now, if they were not as low as ten to twenty per cent., what were they?

"A. I think they were somewhere in the neighborhood of fifty per cent of their value. * * * from forty to fifty.

"When did you discover that?

"A. I felt that all the time. I think I did not tell the truth when I said it was ten to twenty. I was writing that letter for a purpose.

"Q. In other words, knowing at the time in your conscience that the assessed valuation was fifty per cent. of what you believed to be the true valuation, you falsely stated that it was but ten or twenty per cent of it?

"A. I so stated in that letter. * * *

"Q. Was it true or was it false?

"A. It was not true."

Grasty testifies that he had a conversation with Lotzgesell, a member of the Board of Equalization and County Commissioner from the Eastern part of the county, as follows:—

"A. I had a talk with Mr. Lotsgezell regarding the values of property in Clallam County, and in Port Angeles, and he informed me that taxes were higher outside of Port Angeles than in other places in Clallam County; that the taxing business was in the hands of Port Angeles politicians. He stated to me that they were assessing the timber people rather stiff rates of interest, and that they had been protesting, and he expected some trouble from that source. I asked him if he would mind giving me a letter covering this difference, from his view point between assessed and the real value of property, and he promised me that he would, and that he would bring it into Dungeness the next morning. This was on Saturday night. At ten o'clock in the morning Mr. Lotsgezell had not put in his appearance, and I telephoned his home, and he replied over the 'phone by saying, 'Mr. Grasty, I have decided that I cannot give you that letter that I promised you'; and I asked him why, and he stated 'That he was afraid of getting himself in trouble; that there were certain things going on that he could not talk about, and that somebody was likely to be gotten across a barrel', and he would explain to me what he meant when he saw me in person, and he could not talk to me over the 'phone.

"Q. Did he ever make any further explanation of it?

"A. He never did; because I have never seen him from that time to this.

"Q. Did you discuss with him in regard to the discrepancy of the valuation and the assessment of any particular property?

"A. Not any special property. I did take up with him the matter of the Elks Building, because he, being an Elk was naturally interested in that, and I pointed

out to him that in the matter of raising the money on a bond issue that the value of the property would have to be appraised, and the people who might investigate those questions discovering such a discrepancy, if the matter could not be properly explained by the proper people, it was foolish to try to obtain a loan. And he simply said: "Well, the matter is as I have stated, and that is that the assessments of taxes are in the hands of a bunch of politicians in Port Angeles.

"Q. Did he say whether they were assessing property high or low?

"A. He said they were assessing property lower in Port Angeles than any place in the county, and that taxes were too high every where else in the county, both in the farm and the timber districts."

Concerning these conversations, Mr. Lotsgezell testified:—

"A. That statement of Mr. Grasty is absolutely false.

"Q. Just what did happen between you and Mr. Grasty?

"A. Mr. Grasty called me up from Dungeness over the 'phone and told me that he wished to see me on some very important business, that he could not talk over the 'phone, and wanted to know how he could meet me. I told him that I would come in that evening and see him.

"Q. Is this the first time that you came in contact with Mr. Grasty?

"A. Yes, sir, that is the only time I ever met Mr. Grasty.

"Q. Did you meet him personally at the time he called you up?

"A. Yes sir, I went out and met him at the hotel.

"Q. He called you up first, did he?

A. Yes sir.

"Q. All right, go ahead.

"A. I went to Dungeness and he was waiting for me, and he introduced himself, took me up to his room in the hotel and he told me that I owned a couple of lots at the head of the bay in Port Angeles, close

to the Earle's mill, and he would like to buy them of me. I told him that he was mistaken, that the lots belonged to my brother, that I owned no lots there. I said 'You can call him up over the phone, if you want to.' He said very confidentially that he was looking up a big mill site for Merrill-Ring Lumber Company, and he didn't want anybody to know anything about it, and for that reason he did not want to call him over the phone. He told me also he was negotiating with the Elks to make them a loan and showed me a statement that he had from Mr. Lutz and Mr. Christensen in regard to the value of property, and asked me what I thought about it. I kind of laughed and told him I thought they were pretty high on Port Angeles property. He asked if I did not think Mr. Lutz and Mr. Christensen were very conservative business men. I told him I thought they were, but they and I did not agree on the prices of Port Angeles property. He said he did not know how he would make a loan unless there was some showing made to his firm that the property was assessed so low. He asked me if I could not give him a letter of that kind. I told him I did not see how I could; I did not think that the property in Port Angeles was worth any more than it was assessed at; that I did not feel like I would take the whole town for the assessed value.

"Q. What is the last?

"A. I told him I did not think I would take the whole town at its assessed value. He asked me if the fact of this large mill coming there, if I did not think I could find some way by which I would give him such a letter and I told him if I did I would have to do it against my own judgment. He made lots of suggestions of development that he knew was going to be there. He urged me very strongly to try and help the Elks out. I told him if I could think of any means by which I would give the letter I would call him up on the phone or see him before the boat left. About ten o'clock the next morning I called him up and told him I did not see how I could give him that letter. He said he was very sorry; that it would help him in his

business down there. That is the last I ever saw of Mr. Grasty or heard of him, until I saw him in the court room."

A great many witnesses have testified as to their long residence in the county; that they never heard of any plan or agreement being made to give high values in the timber assessments and that they never had heard of such procedure being advocated either generally or in the political campaigns carried on in the county. No evidence has been introduced to contradict this. There has been no testimony that the plaintiffs, or other non-operating timber owners, had ever been threatened by any county officials with a raise in their timber assessments unless they would operate.

Mr. Hallahan, the assessor, when called upon to explain the raise in the timber assessments in the year 1914 over prior assessments—while there had been no increase in actual market values, testified in substance that he became convinced that the prior assessment was too low; that while the cruise of plaintiffs' lands might have been completed prior to the former assessment, yet a total cruise had not been completed of the timber land of the county when the prior assessment was made, but had been completed before the assessment of 1914, the inference being that, in order to treat the timber owners alike, an advance in values was deferred until the completion of the cruise. He further testified that the building of the Milwaukee railroad out from Port Angeles in the direction of plaintiffs' lands had increased their value.

While this extension is of no immediate use in logging these lands, yet the promise it holds out for the future probably affected the market value. At any rate, the assessor's action in giving consideration to that fact would be neither arbitrary nor fraudulent. The assessor's failure to take into account all of the conditions that might affect the question of value, or in giving greater consideration, relatively, to certain of such conditions than he should, is neither arbitrary nor fraudulent, but, at most, an error. An error,

alone, as is well known, does not invalidate an assessment.

A practice was shown, in assessing the county lands, to fix the values biennially, these figures having been fixed as of March 1, 1912, for the years 1912 and 1913.

The boom in property values in that county came on in the latter part of 1912. Prior to the law of 1913, providing for assessment at 50% of the true and fair values (Laws of 1913, chap. 140, page 438), in practice, values had been fixed, not at the full value of the property, but at some lesser ratio.

The assessments are not made public until about the time of the meeting of the Board of Equalization, in August of the even numbered years.

Mr. Grasty's conversation with the officials of the defendant county were all had before the assessment of 1914 was made public. This assessment made a substantial advance over that of 1912 and 1913, in some instances in Port Angeles property the advance being as great as 73%. A general advance on all land assessments is shown, in spite of the fact that the plaintiffs allege:

"the said assessing officers of Clallam County have wrongfully, unlawfully and corruptly combined and concerted together with the intent and purpose to increase the assessments upon the timber lands in the west end of the county beyond their proportion of the true and fair value of the property within the county and to lower and depreciate the assessments upon the property of the City of Port Angeles, and contiguous thereto, or in that vicinity, the farming lands in the east end of the county and other properties within the county, and especially in the middle and east district thereof and to assess the same upon a basis and at valuations far below their proportion of the true and fair value of the property subject to assessment in Clallam County."

The testimony of Grasty as to these conversations and of those contradicting him may, in part, be reconciled by the assumption that Grasty believed that the

law required assessments to be made on the full, actual value, while those to whom he talked knew that the assessment was at a lesser ratio and that Mr. Grasty thought that the assessment with which he was more or less familiar was that of 1914, whereas it was the assessment of 1912.

The fact that Lotsgezell, one of the members of the Board of Equalization, testified that, as to real estate values and that of bank stock and merchandise, he deferred to the assessor's judgment, while he followed his own judgment as to the value of live stock, because he was acquainted with its value, would deprive the plaintiffs of no right, or show an arbitrary action, or want of consideration by the Board of Equalization of their protests.

The action of such a body as a Board of Equalization is to be considered much as the action of a jury, the value of its determination, largely, depending upon the members conceding the advantage given the individual member by his knowledge and experience acquired in his particular vocation, the policy which forbids allowing the member of such a body, in his personal affairs, to impeach, by ex parte admissions, the collective action of such a body, should equally obtain.

Chicago, B. & Q. R. Co. v. Babcock, 204 U. S. 585 at 593.

Other large timber owners in Clallam County, similarly situated to plaintiffs, have paid their taxes for 1913 and 1914, the acreage held by them amounting to 2,248,044, while their taxes aggregated \$63,569.39 for 1913, and \$32,741.60 for 1914.

In *National Lumber & Manufacturing Co. v. Chehalis County* (44 Wash. Dec. 347 at 351), it is said:

"Some 46 mills were assessed for the year 1913 in the same manner. Of these nine or ten have contested the assessment. While the fact that the other thirty-six have not complained of their assessment is not evidence that the depreciated value of the appellant's plant is its market value, it yet may be referred to as showing that the standard used was not generally, by mill owners, regarded as incorrect or unjust."

While it has been shown that the assessment on fir, spruce and cedar varied from one dollar, in the zone of highest values, to fifty cents in the zone of lowest value, no such percentage of difference is shown in the assessment of hemlock in these zones, the highest being forty cents and the lowest twenty-five cents. It is the testimony of many witnesses that hemlock had substantially no value in the market. Witnesses testified that its chief value would be upon the land, in the construction of rail and logging roads. This fact, probably, accounts for, and might justify the difference in the allowance made in the several zones as to hemlock.

On the motion to dismiss, this court held:

"By the allegations of the bill of complaint, actual fraud is charged between the assessing officers. The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and co-operation with relation to the excessive valuation and assessment of the lands of the complainant. By reason of the allegations and charges made in the bill of complaint, I think justice demands that the bill be answered, and whether relief should be afforded to the complainants will depend upon the evidence which is presented in support of the charges and complaints made."

Notwithstanding this ruling, a large amount of testimony, both opinion evidence as to values and evidence of individual property sales has been introduced.

The material development of Clallam County had been at a standstill for a number of years when, in the latter part of 1912 and early part of 1913, it experienced a boom, owing to the announcement that the Milwaukee was to build the first railroad in the county and the commencement of the development of a large electrical power project, together with the announcement of the early construction of one of the largest lumber mills in the world. It is shown that skilled speculators further cultivated the excitement naturally incident to such a state of affairs.

No. 36

When those conditions are considered, together with the necessarily opinion nature of the question of value at all times of all things, it is not surprising to find that the witnesses for plaintiffs and defendants were wide apart in their estimates of value. Under such circumstances, a wide range in honest opinions as to value is to be expected, but it is not the province of the court to further complicate matters by an announcement of an exact, judicial opinion as to these values.

- Cummings v. Nat'l Bank*, 101 U. S. 153, 25 L. Ed., 903;
Albuquerque Nat'l Bank v. Peres, 147 U. S. 87;
Coulter v. L. & N. R. Co., 196 U. S. 605;
C. B. & Q. R. Co. v. Babcock, 204 U. S. 585;
San Diego Land & Town Co. v. National City, 174 U. S. 739;
State Railroad Tax Cases, 92 U. S. 575, 575;
Exchange Nat'l Bank v. Miller, 19 Fed. 372;
Templeton v. Pierce County, 25 Wash. 377;
Edison Elec. Ill. Co. v. Spokane Co., 22 Wash. 168;
Carlisle v. Chehalis County, 32 Wash. 284;
N. P. R. Co. v. Pierce County, 55 Wash. 108;
Henderson v. Pierce Co., 37 Wash. 201;
Simpson Log. Co. v. Chehalis County, 80 Wash. 245;
N. P. R. Co. v. State, 42 Wash., Dec. 271;
Wells Fargo & Co.'s Ex. v. Crawford Co., 42 S. W. 710;
Sanitary Dist. of Chicago v. Gifford, 100 N. E. 953;
Burton Stock Car Co. v. Traeger, 58 N. E. 418;
People ex rel. Thompson v. Bourne, 89 N. E. 690 at 691;
Hillman's, etc., v. County of Snohomish, 45 Wash. Dec. 28 (page 30);
Andrews v. King County, 1 Wash. 46;
Olympia Water Works v. Thurston County, 14 Wash. 268;

Olympia Water Works v. Gelbach, 16 Wash. 482;

Noyes v. King County, 18 Wash. 417;

Vancouver Water Works Co. v. Clarke County, 55 Wash. 112;

Olympia v. Stevens, 15 Wash. 601;

Hammond Lbr. Co. v. Cowlitz Co., 42 Wash. Dec. 237;

Doty Lbr. & Shingle Co. v. Lewis Co., 60 Wash. 428, at 431.

The question for the court to determine is whether the plaintiffs have maintained the burden of establishing, by clear and convincing evidence, that there was no exercise of an honest judgment by the assessor, but that he, as a part of the conspiracy with the Board of Equalization, fraudulently overassessed plaintiff's timber lands.

C. B. & Q. R. Co. v. Babcock, 204 U. S. 585;

San Diego &c., Co. v. Nat'l City, 174 U. S. 759;

Doty Lbr. & Shingle Co. v. Lewis Co., 60 Wash. 428;

Carlisle v. Chehalis County, 32 Wash. 284;

Nat'l Lbr. & Mfg. Co. v. Chehalis Co., 44 Wash. Dec. 347;

Chicago v. Gifford, 44 Wash. Dec. 347.

Tenders were made by the plaintiffs of that portion of the taxes for the year 1913 admitted to be just and due, amounting to \$39,250, and further, for the taxes of 1914, amounting to \$32,371. It has not been shown in what manner the justness of the amount of these tenders was reached.

Testimony has been given concerning the values of plaintiffs' timber and that in the center of those districts called "Straits" zones. Also, farming lands in the Dungeness and Sequim bottoms and lots in Port Angeles and Sequim and certain milling property, but there has been nothing like evidence concerning the value of the property in the entire county, attempted. Nor is it conceded, or proven, that the properties concerning which there has been testimony as to value are

fair samples of the property of the county in this particular.

Under these circumstances, if it were conceded that the assessment was wrong and the court were to undertake to determine from this evidence what valuation to put on plaintiffs' lands, so that it would bear the same proportion to the total of the assessed valuation of the other county property, or other county property, generally, or other timber lands generally, as their actual value bears to the actual value of such property in the county, it would be impossible.

It has been shown that, within the corporate limits of the Town of Port Angeles, there are two acres for every man, woman and child there residing.

Various elements are to be taken into consideration in forming an opinion as to the value of a thing. One of these is the selling price of other similar things near the time in question; but it is perfectly clear that, as an evidence of value, such selling price is of much less worth in one case than another.

Take, for example, wheat: Almost the entire crop for one year is sold before the next year's crop is ready. It is a staple. There is a constant demand for it. In each case, it is not necessary to look beyond current sales to form an opinion of its value.

On the other hand, take a new, over-boomed town with not one out of one hundred of its lots used or improved; how misleading it would be to depend on one sale, or several sales, to determine the value of unimproved lots! It would be an easy rule, but not a safe one.

In the case of Port Angeles, where hundreds of vacant lots have been held for years, at considerable expense to the holders, the fact that the holders of such property become very hopeful with the advent of a railroad and other large enterprises and that a few sales were made at substantial prices—a dozen or two such sales, in the business section, exhausting the market—there would be no warrant for taking such selling price as determining the true measure of value of the unsold lots. The taxes are assessed, levied and

paid each year. Such sales may be made once in twenty years. If such rule was followed, then, in lean years, no property being sold, the lots would have no value. A rule that leads to such a conclusion is wrong.

"It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some, at least, of the conveyances did not report true prices, yet they furnish the chief weapon of attack." (*Coulter v. L. & N. R. Co.*, 196 U. S., 605 at 610.)

In considering the various elements by which to measure the value of the bulk of the property, the few boom prices existing in 1912 should be spread over a number of years to avoid injustice. Timber lands, in their nature, are much more stable in value. Both Mr. Hallahan, in the statements attributed to him by Grasty:

"We grade the property in the county and assess it accordingly."

"We assess timber in the county more than we do anything else."

and Mr. Hansen in his letter above set out would appear to have had, in so stating and writing, something of this kind in their minds.

Of course, if the assessor, for the sole purpose of making these plaintiffs operate their timber property and become lumber producers, over-assessed them, his action would be fraudulent; but, if he increased their assessments, only to the extent he considered equal in proportion to the assessment on other property, it matters not that he believed that such higher assessment would make them operate, and that he thought it a good thing that they should. This action would not be fraudulent. The purpose with which an act is done and the effect are two different things. One of the effects of a tariff for revenue only is incidental protection, but it is not the purpose of the makers of the tariff.

The statements attributed to the assessor may, if taken at their face, tend to show that he lacked pure singleness of purpose, but when viewed in the light

of the inducement held out to him, it is not unreasonable to conclude that he brought forward the effect he thought would be accomplished by the increased assessment and magnified it into his purpose in order to make his point with Grasty and convince him of the great value of the other Port Angeles property. Recollections of conversations had long past are dangerous guides.

If the construction of the quoted letters and alleged conversations contended for by plaintiffs was conceded, it would be far from clear that the county officers attacked by them spoke truthfully. The plaintiffs presuppose the dishonesty of these officials and contend that, in order to build up the Town of Port Angeles, the western part of the county was dishonestly and fraudulently discriminated against in the matter of the assessment.

As the inducement held out in his talks with these officers by Mr. Grasty was exactly towards the same end—that is, the improvement of Port Angeles by the loaning of money on the property therein—if it be presupposed that these men would act fraudulently in the one instance, it would not be unreasonable to suppose that they would do likewise in the other.

In their relations with Mr. Grasty, the contingency of gain by reason of the statements to him was imminent, and the restraint concerning misrepresentations as to what they had theretofore done as officers was remote. The burden upon the plaintiffs is to show that these officials acted fraudulently in the particular matter of these assessments, and not that they may not have been honest men at all times.

Their action in making these assessments was under sanction of an oath, while their conversations with Mr. Grasty were more in the nature of traders' talk.

Olympia v. Stevens, 15 Wash. 601.

It may be conceded that, in certain isolated cases, as with the property of Earle's mill, the Olympic Power Company, the banks in Port Angeles and shingle mills, the assessments did not bear as great a percentage to their actual value as is the case of plaintiffs' lands, yet

the court would still be left without a measure, or standard by which to safely scale down the assessments on plaintiffs' property.

Concerning such isolated cases of under assessment, the only remedy would appear to be the opportunity afforded other tax payers of appearing before the Board of Equalization and obtaining an increase in the assessments of such favored ones. In so concluding, I have not overlooked the fact that the assessor has testified that any mistake made in the assessment concerning the banks was owing to a misinterpretation of the law regulating the assessment of banks; that the shingle mills referred to were in sections where the shingle timber had been cut out and the mills would have to be moved to other localities to be of any use, and that, in so moving them, their value would be largely lost; that the Earle's mill was not completed at the time of making the assessment and that the Olympic Power Company's plant was assessed low on account of its having been damaged—the extent of which was unknown at the time of the assessment—by an accident in connection with its dam.

Such explanations are so far reasonable as to deprive these instances of under assessments of any particular probative value in sustaining the charge of fraud.

The bills of complaint will be dismissed at plaintiffs' costs.

Indorsed: Decision on the Merits. Filed January 22, 1916.

No. 36
DECREE

The above entitled cause having come on duly and regularly for trial before the undersigned Judge of the United States District Court, the plaintiff appearing by its attorneys, F. W. Keeney, Esquire, and Messrs. Earle & Steinert and Messrs. Peters & Powell, and the defendants appearing by Sandford C. Rose, Esquire, Prosecuting Attorney for Clallam County, and by their attorneys, Messrs. J. E. Frost, Edwin C. Ewing and C. F. Riddell, and their being at issue and ready

for trial three other causes now on file in this Court, involving substantially the same issues and requiring substantially the same testimony, and counsel for all parties hereto, with the consent of the Court, having stipulated that all the testimony introduced in so far as applicable should be considered upon the one trial as having been introduced in each of said causes, the said causes being this cause and cause number 56 in this Court, between the same parties, and causes numbered 37 and 57 in this Court in which Charles H. Ruddock and Timothy H. McCarthy are plaintiffs and Clallam County and its Treasurer, in his official capacity as such officer, are defendants; and all parties having introduced testimony and rested, and respective counsel having orally argued this cause to the Court, and having submitted their briefs to the Court, the Court having considered the same; and it appearing to the Court that by written stipulation between the parties filed in this Court on the 6th day of November, 1914, and order then entered, there was on said 6th day of November, 1914, paid by the clerk of this Court to the defendant Clallam County the sum of \$29,400.00, the same being the proceeds of the tender theretofore paid into this Court by this plaintiff, and the Court, after full consideration of all the facts and the law, being now duly and fully advised in the premises,

It is hereby ORDERED, ADJUDGED and DECREED that the above entitled cause be and the same hereby is dismissed with prejudice, and that plaintiff take nothing by this cause.

It is further ORDERED, ADJUDGED and DECREED that all the taxes levied for the year 1913 upon the real property described in the complaint herein are in all things legal and valid and (except for the payment hereinafter in this decree mentioned) are due and owing to Clallam County, a municipal corporation of the State of Washington.

It is further ORDERED, ADJUDGED and DECREED that the payment of said sum of \$29,400.00 do operate as a payment pro tanto of the taxes for the year 1913 due upon the real property described in the

complaint herein, and that the tax for said year 1913 so due upon each description of property appearing upon the tax rolls and set forth in said complaint be determined by the County Treasurer of said Clallam County in the following manner, to-wit: That said Treasurer determine the total amount of tax due for the year 1913 upon all of said real property described in the complaint herein; that he credit on the said taxes due upon each such description on the tax rolls a sum which bears the same ratio to the total amount due on such description of real property as \$29,400.00 bears to the total amount of tax due upon all of said property for the year 1913; that the amount left after making said deduction be considered and hereby is decreed to be the principal amount of such taxes still due upon such description; that the said Treasurer figure interest according to law relating to delinquent taxes, upon the total amount due on each said description on the tax rolls up to the 6th day of November, 1914, and that he figure interest, according to law relating to delinquent taxes, upon the balance due after allowing the credit aforesaid from the 6th day of November, 1914, until paid; and the said balance due, together with the interest figured as aforesaid, and all other lawful costs and charges accruing, shall be the amount necessary to be paid to redeem the said property from the lien of the said taxes.

It is further hereby ORDERED, ADJUDGED and DECREED that the above named defendant Clallam County, a municipal corporation of the State of Washington, do have and recover of and against the above named plaintiff Clallam Lumber Company, a corporation, a judgment for its taxable costs and disbursements herein, which are hereby taxed in the sum of seven hundred sixty dollars and five cents (\$760.05), for which said sum let execution issue.

To the dismissal of this cause, and to each separate paragraph of this decree and to the signing and entry of this decree, the above named plaintiff excepts and its exception is hereby allowed by the Court.

Done in open Court this 3d day of February, 1916.

EDWARD E. CUSHMAN,

District Judge.

Indorsed: Decree. Filed February 3, 1916.

IN EQUITY

No. 36

ORDER ON EXCEPTIONS TO SECOND
AMENDED ANSWER OF THE DE-
FENDANTS

The defendants upon the conclusion of the evidence in this cause on the 10th day of December, 1915, obtained permission from the court to amend their answer herein so as to conform to the proofs, which permission was then granted over the objection of the complainant, to which the plaintiff excepted and said exception was then allowed.

The application of the defendants now made to file herein a formal second amended answer embodying these proposed amendments, is now allowed over the objection of the complainant to which exception is reserved by the complainant and said exception is here and now allowed.

Referring to paragraph XIII of said amended pleading complainant excepts to the amendment which now reads:

"Defendants admit the practice by assessors and taxing boards of the custom herein referred to and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization,"

whereas in their former answer they had specifically denied these matters.

And referring to line 18 of said paragraph XIII the defendants now omit the following allegation which appeared in the former answer:

"Or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the year 1912 and 1913 were made."

And referring to line 23 of said paragraph XIII,

the defendants "deny that the interior timber lands in said county were valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money," whereas they previously admitted such matter. And immediately prior to such admission was the following allegation:

"Or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessments for the years 1912 and 1913 were made,"

which last allegation is now omitted from this answer.

II

Referring to paragraph XIV, of said amended pleading complainant excepts to the amendment which now reads:

"They deny that said assessment for the year 1913 was made upon the basis of $83\frac{1}{2}$ per cent,"

omitting from this amendment, what they had formerly pleaded as follows:

"Or upon any other or different basis than the true and fair value in money of the property assessed."

III

Referring to paragraph XVI, of said amended pleading, complainant excepts to the amendment which now reads, at line 9, on page 9;

"Deny that it has been the custom of the assessor of said county to consult and advise with other members of the County Board of Equalization of said county," etc.

whereas in their former pleading, they admitted such allegation.

IV

Referring to paragraph XXI of said amended answer, at page 12, line 17 thereof, the defendants now allege:

"But deny that the same can readily be logged to the Straits as stated,"

whereas in their former pleading they admitted this allegation.

Complainant's objection is based upon the ground

that such amendments are not consistent with the proofs, and are wholly inconsistent with the pleading upon which the case was tried, and with the position taken by the defendants throughout the trial.

Complainant's exceptions to each of the amendments to the answer in each of the above particulars are hereby allowed. Such exceptions to be entered as of date February 3, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Order on Exceptions to Second Amended Answer of Defendants. Filed February 24, 1916.

No. 36

PETITION TO REHEAR AND TO MODIFY
JUDGMENT

Come now the plaintiff, Clallam Lumber Company, and respectfully prays this court to grant a rehearing herein, in this:

I

The court erred in sustaining the assessment by Clallam County of the hemlock timber and hemlock ties of the plaintiffs in any sum whatsoever, for the reason that it appeared from the evidence in the entire record that this timber and these ties were of no appreciable market value at the dates of the assessment, nor at any time covered by the facts of this case. The court therefore should have struck such assessment of the plaintiff out, whether the plaintiff had made a case of fraud upon the entire issue or not, since a court of equity having acquired jurisdiction, on the grounds of fraud, would retain it to do equity to the plaintiff, even if the plaintiff failed in sustaining charges of fraud.

Simkins A Federal Equity Suit, p. 27.

Griswold vs. Hilton, 87 Fed. 257.

Waite vs. O'Neill, 34 L. R. A. 550, 76 Fed. 408.

Shainwald vs. Lewis, 69 Fed. 492.

II

The plaintiff respectfully prays the court to modify the judgment and decree by charging the plaintiff or

the plaintiff's lands with interest at six per cent per annum from the date of delinquency of taxes, instead of the statutory rate, in view of the plaintiff's good faith in bringing this suit and in the prosecution of the same, and on the ground of its being an unnecessary hardship to penalize the plaintiff with so high a rate of interest under the circumstances.

Respectfully submitted,

PETERS & POWELL,
EARLE & STEINERT,

Attorneys for Plaintiff.

United States of America,
State of Washington, ss.
County of King.

Dan Earle being first duly sworn, on oath says: That he is one of the attorneys for the plaintiff in the above entitled cause and makes this verification on its behalf for the reason that said plaintiff has no officer or agent residing in the Western District of Washington; that he has read the foregoing Petition for Rehearing and to Modify Judgment, knows the contents thereof and believes the same to be true.

DAN EARLE.

Subscribed and sworn to before me this 3rd day of March, 1916.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Petition to Rehear and to Modify Judgment. Filed March 3, 1916.

Nos. 36, 37, 56, 57

HEARING—JOURNAL ENTRY

Now on this day this cause comes on for hearing on motion for rehearing or review, the Plaintiff being represented by Peters & Powell and D. Earle, and the Defendants represented by C. F. Riddell, and the Court after hearing argument of respective counsel takes the said matter under advisement.

Dated April 18, 1916.

Equity Journal 1—Page 125.

Nos. 36-37, 56 & 57
MEMORANDUM DECISION ON PETITION FOR
A RE-HEARING
FILED MAY 11, 1916.

Peters & Powell,
Earle & Steinert,
Jones & Riddell,

For Plaintiffs.
For Defendants.

J. E. Frost,
E. C. Ewing,
CUSHMAN, District Judge.

Insofar as the petition for a re-hearing is aimed at the assessment as affected by the hemlock valuation, all that can be said is that certain phases of the evidence—particularly that of some of defendants' witnesses—are more favorable to plaintiffs as to the overvaluation of the hemlock than that covering the valuation of the fir, spruce and cedar; but, after all is said, it is only a question of overvaluation and, in any event, it is not so palpably excessive as to warrant a finding of fraud.

The cases relied upon by the plaintiffs are not cases of overvaluation, but uniformly involve some other controlling element as: fraud; the adoption of a fundamentally wrong principle; an erroneous system; mistake of law or such palpably excessive overvaluation as to impute fraud.

As to the question of interest on the unpaid and untendered taxes, the laws of Washington provide:

"Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin * * * the collection of any taxes * * *, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation on the property * * *".
(Sec. 955 Rem. & Bal. Code.)

"The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school,

bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of fifteen per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid." (Sec. 9219 Rem. & Bal. Code.)

It may be conceded that this suit was brought in entire good faith; that plaintiffs' only remedy was in equity and not at law and that the fifteen per cent. interest charged upon the taxes is a penalty, yet I find no warrant therein given the court to set aside a statute passed to safeguard the sources of the state's revenues.

Re-hearing denied.

Indorsed: Memorandum Decision on Petition for a Rehearing. Filed May 11, 1916.

No. 36

ORDER DENYING PETITION FOR REHEARING

A petition for rehearing having been filed by the plaintiff in the above entitled cause, briefs having been submitted thereon, and the court having considered the same; and the court having on the 11th day of May, 1916, filed its memorandum decision herein on said petition for rehearing;

Now, therefore, it is hereby ordered that said petition for rehearing be and the same hereby is denied. To the denial of said petition and to the entry of this order plaintiff excepts and exception is hereby allowed.

Done in open Court this 15th day of May, 1916.

EDWARD E. CUSHMAN,

United States District Judge.

Indorsed: Order Denying Petition for Rehearing. Filed May 15, 1916.

Tuesday, May 2, 1916.

Court met pursuant to adjournment. Present: Hon. Jeremiah Neterer, Judge; F. L. Crosby, Clerk; Albert Moody, Assistant U. S. Attorney; Crier Kelly, Bailiff; Yeatowan Eaton; W. E. Theodore, Deputy U. S. Marshall.

Whereupon court stands adjourned sine die.

JEREMIAH NETERER, District Judge.

No. 36

NOTICE OF LODGMENT OF STATEMENT

To Clallam County and Clifford L. Babcock, Treasurer, Defendants, and to Messrs. J. E. Cochran, J. E. Frost, C. F. Riddell and Edwin C. Ewing and Sandford C. Rose, their attorneys.

You and each of you are hereby notified that the above named plaintiff has prepared and has this day lodged in the office of the Clerk of the above entitled court at Seattle, Washington, for your examination, a statement of all the testimony introduced upon the trial of the above entitled cause essential to the decision of the questions presented by the appeal of said cause to the United States Circuit Court of Appeals for the Ninth Circuit, together with all objections and exceptions made and taken to the admission and exclusion of evidence, and all motions and rulings thereon made upon said trial:

And you are hereby further notified that the above named plaintiff will upon the 18 day of September, 1916, at the hour of ten o'clock A. M., of said day, at the court room of the above entitled court, in the United States Court House in the City of Seattle, State of Washington, present said statement to the above entitled court and to the Honorable Edward E. Cushman, the Judge who presided at the trial of said cause, and the Presiding Judge thereof, or to the Honorable Jeremiah Neterer, in the event the said E. E. Cushman is disabled from attending or presiding in said matter, and ask said court and judge to approve the same.

EARL & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiff.

Copy of the foregoing NOTICE OF LODGMENT OF STATEMENT received in Seattle, Washington, this 1st day of September, 1916.

SANDFORD C. ROSE,
JONES & RIDDELL,

Attorneys for Defendants.

Indorsed: Notice of Lodgment of Statement.
Filed September 1, 1916.

No. 36

ORDER AS TO SETTLEMENT OF STATEMENT
OF FACTS

This matter coming on now to be heard before the Hon. E. E. Cushman, Judge, upon the consideration and settlement of the statement of facts herein on appeal, proposed by the plaintiff, the plaintiff being present and represented by its counsel, Peters & Powell, and the defendants being present and represented by their counsel, C. F. Riddell, Esq., and it being now represented to the court by both parties that the statement as proposed by the plaintiff and lodged by it with the clerk of this court on the 1st day of September, 1916, and the amendments thereto and alterations thereof proposed by the defendants and lodged with the clerk of this court on the 20th day of October, 1916, as now checked and corrected by said parties, constitute a true and complete statement of all of the evidence and testimony introduced upon the trial of the above entitled cause, essential to a decision of the questions presented upon the appeal of said cause, together with all exceptions taken and objections made to the admission or exclusion of evidence, and all motions and rulings thereon made upon said trial, and that same contains all the evidence given or offered upon said trial and all the material matters occurring therein not already a part of the record herein; and it being stipulated by said parties in open court that said statement as so amended may be reduced to printed form and in such form may be approved, signed and certified by this court as a true, complete and properly

prepared statement on appeal and may thereupon be filed herein as of this date,

IT IS HERE AND NOW ORDERED that the foregoing disposition of the matter is hereby consented to and made by this court.

Done in open court this 27th day of October, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Order Settling Statement of Facts on Appeal. Filed October 27, 1916.

No. 36

ASSIGNMENTS OF ERROR ON APPEAL

Now on this 27 day of October, 1916, comes the plaintiff, Clallam Lumber Company, by its solicitors, Earle & Steinert and Peters & Powell, and say that the Decree entered in the above entitled cause on the 3rd day of February, 1916, is erroneous and unjust to the plaintiff, for the following reasons:

I

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross examination of the witness, Thomas Aldwell, a witness for the plaintiffs on the value of the Olympic Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiff objected. The objection was overruled, and the witness answered (Plaintiffs reserving and being allowed an exception):

"I think around Port Angeles they were very optimistic."

"Q (By defendants' counsel) In other words the general impression was that your dam and power site was a failure up there?"

To this plaintiff objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

II

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross examination of the witness Aldwell, a witness for the plaintiff as to the value of town lots in Port Angeles in March of 1913 and 1914:

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars worth of Port Angeles property that he had, for double its assessed value, to which the plaintiff objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the court was error.

III

Because the court erred in admitting the testimony of the defendants' witness, C. M. Lauridsen under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by the plaintiff on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the court, an exception taken by plaintiff and allowed by the court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being Defendants' Exhibit 29.

II

Because the court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q That property, according to Mr. Ware's testimony was worth \$6000 on the first of March, 1914. Will you state what you paid for it?

A I paid \$2500 on the 13th of March of that same year."

To which ruling the plaintiff excepted and its exception was allowed by the court.

III

Because the court overruled the objection of the plaintiff to the following question put by the defendants to their witness, C. M. Lauridsen:

"Q State the facts about the purchase of Lots 18 in Block 54 and Lots 7 and 14 in Block 172."

To which the witness answered:

"Lot 18 in Block 54 I bought in January for \$300." Lot 7 and lot 14 in Block 172, the witness says he purchased for \$175.

To which ruling the plaintiff excepted and its exception was allowed by the court.

IV

Because the court erred in sustaining the objection of the defendants to the following question put by the plaintiffs to one of the defendants, Clifford L. Babcock:

"Q Again in section 18 of your answer you say 'Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent of their true and fair value in money.' Could you state then what you had in mind at that time as the rate at which they were assessed?"

To which ruling the plaintiff excepted and its exception was allowed by the court.

V

Because the court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer, in the following particulars, to wit:

(a) In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had de-

nied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they "Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the state Board of Equalizaion," meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value.

(b) In their former answer they had denied "that the Assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessment for the years 1912 and 1913 were made.*"

In their second amended answer, they omit all of that portion above underscored.

(c) In their first amended answer, paragraph XIII, they plead as follows:

"Admit that the interior timber lands in said county including the lands owned by the plaintiff, were and are valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money."

In their second amended answer, they deny this allegation.

To this amendment plaintiff objected at the time, but said objection was overruled and an exception allowed by the court.

VI

Because the court allowed the defendants, over the objection of the plaintiff then made at the conclusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer, the defendants had alleged in paragraph XIV thereof the following:

"Deny that said assessment for the year 1914 was made upon the basis of 83½ per cent *or upon any other*

or different basis than the true and fair value in money of all property assessed."

Whereas the second amended answer contains the same denial, omitting however, the words above underscored.

Plaintiff reserved an exception to this amendment at the time, which was allowed by the court.

(b) In their first amended answer, in paragraph XXI thereof, they had alleged: "That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the Straits as stated," while in their second amended answer they *deny* that said timber can readily be logged to the Straits as stated.

To this amendment and to the allowance thereof the plaintiff at the time reserved an exception, which was allowed by the court.

VII

Because the court erred in decreeing that the taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to wit, in the sum of \$50,049.59 (or in any sum in excess of \$30,000.00) were legal and valid.

VIII

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

IX

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in their bill, was not in excess of \$30,000, and that the plaintiff had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X

Because the court erred in its decree in failing to

find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of \$50,049.59 were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XI

Because the court erred in refusing to re-adjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$30,000 tendered by the plaintiff, and to cancel from said lands the balance of said taxes.

XII

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles and in failing to cut down the amount of the tax levy, as provided in the decree by at least the sum of \$8,955.56.

XIII

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XIV

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

XV

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complain.

XVI

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1913 taxes, in the sum of \$50,049.69, whereas a just and fair assessment of such lands did not exceed the sum of \$30,000.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against

the plaintiffs and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

WHEREFORE plaintiffs pray that such judgment be reversed and that this Honorable Court will direct the entry of a judgment or decree in accordance with the prayer of plaintiff's complaint.

EARL & STEINERT,
PETERS & POWELL,
Attorneys for Plaintiffs.

Indorsed: Assignments of Error on Appeal. Filed
October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN DI-
VISION

CLALLAM LUMBER COMPANY, a corporation,
Plaintiff,

vs.

CLALLAM COUNTY, a municipal corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Defendants.

No. 36

PETITION FOR APPEAL

Filed Oct. 27th, 1916, in the District Court of the
United States for the Western District of Washington.
TO THE HONORABLE EDWARD E. CUSHMAN,
DISTRICT JUDGE:

The above named plaintiff, feeling itself aggrieved by the decree made and entered in this cause, on the 3rd day of February, 1916, and, after motion for rehearing, upon the 16th day of May, 1916, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Errors, which is filed herewith, and prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the was based, duly authenticated, may be sent to the

record, proceedings and papers upon which said decree United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, and your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal may be made.

EARLE & STEINERT,
PETERS & POWELL,
Solicitors.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five hundred Dollars.

EDWARD E. CUSHMAN,
Judge.

Dated at Seattle, Oct. 27, 1916.

Indorsed: Petition for Appeal. Filed October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN DI-
VISION

CLALLAM LUMBER COMPANY, a corporation,
Plaintiff,

vs.

CLALLAM COUNTY, a municipal corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Defendants.

IN EQUITY—NO. 36
BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That We, Clallam Lumber Company, as principal, and Massachusetts Bonding and Insurance Company as surety, acknowledge ourselves to be jointly indebted to the county of Clallam and Clifford L. Babcock, treasurer, appellees, in the above entitled cause, in the sum of Five hundred (\$500.00 Dollars, conditioned that,

Whereas, on the 3rd day of February, 1916, and after petition for re-hearing thereon, on the 16th day of May, 1916, in the District Court of the United States for the Western District of Washington, in a

suit depending in that court, wherein Clallam Lumber Company was plaintiff and Clallam county and Clifford L. Babcock were defendants, numbered on the Equity Docket as thirty-six, a decree was rendered against the said Clallam Lumber Company, and the said Clallam Lumber Company, having obtained an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, and filed a copy thereof in the office of the clerk of court, to reverse the said decree, and citation directed to the said county of Clallam, and to the said Clifford L. Babcock, treasurer, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 26th day of November, 1916, next.

Now, if the said Clallam Lumber Company shall prosecute its appeal to effect and shall answer all costs, if it fails to make its appeal good, then the obligation to be void, else to remain in full force and virtue.

CLALLAM LUMBER COMPANY,

By W. A. Peters, its Attorney.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.
(Seal)

By Fred B. Potwin, Its Attorney in Fact.
Surety.

Approved Oct. 27, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Bond on Appeal. Filed October 27, 1916.

No. 36

ORDER AS TO EXHIBITS

It appearing, in the opinion of the judge presiding in the United States District Court for the Western District of Washington, Northern Division, necessary and proper that the original exhibits offered and received in evidence or filed in said cause on trial thereof, should be inspected in the above entitled court upon appeal.

IT IS ORDERED that said original exhibits be

retained for safe keeping by the clerk of said District Court, to be by him transmitted under his hand and seal of said District Court to the clerk of the above entitled court at San Francisco, California, as a supplemental record herein upon appeal.

Dated Seattle, Washington, October 27, 1916.

EDWARD E. CUSHMAN,

Judge of the United States District Court, Western District of Washington, sitting in the Northern Division.

Indorsed: Order as to Exhibits. Filed October 27, 1916.

No. 36

ORDER EXTENDING TIME TO DOCKET
CAUSE ON APPEAL

Now on this 2d day of November, 1916, the above entitled cause came on to be heard upon the motion of Clallam Lumber Company, plaintiff and appellant, for an order extending the time in which to docket this case and to file the record thereof with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, upon the ground that the same is necessary by reason of the great bulk of the record to be transcribed or printed herein, and the court upon hearing said motion and being fully advised in the premises, and considering that good cause has been shown for granting the same, and being the Judge who signed the Citation on appeal herein;

IT IS ORDERED That the time within which said appellant shall docket said cause on appeal and the return day named in the Citation issued by this Court, be enlarged to and including the 1st day of January, 1917.

EDWARD E. CUSHMAN, Judge.

Service of the foregoing Order and receipt of a copy thereof admitted this 2d day of November, 1916.

S. C. ROSE,

C. F. RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Order Extending Time to Docket Cause on Appeal. Filed November 2, 1916.

NO. 36

STIPULATION AND ORDER AS TO RECORD

It is hereby stipulated by and between the parties plaintiff and defendant through their respective counsel, that in preparing the transcript and record on appeal all captions, except the name of the paper and number of the cause, except where specially noted in the Praeipie for record on appeal, and all verifications, all certificates of notaries public or other officers or officials to all depositions taken and also the stipulation with reference to taking the depositions, may be omitted, and that all indorsements except to show the name of the paper and date of filing, and all acceptances of service of papers, may be omitted.

PETERS & POWELL,
Attorneys for Plaintiff.

S. C. ROSE,
C. F. RIDDELL,
Attorneys for Defendants.

On reading the foregoing Stipulation as to the record on appeal in this cause it is ordered that said record may be so prepared and filed.

Dated at Seattle, Washington, this 2d day of November, 1916.

EDWARD E. CUSHMAN,
Judge of the above entitled Court.

Indorsed. Stipulation and Order as to Record.
Filed November 2, 1916.

No. 36

PRAECIPE

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare a record on appeal in the above entitled cause, consisting of the following:

(1) Caption exhibiting the proper style of court and title of the case; names of the parties; the several dates when the respective pleadings were filed; the time when the trial was had; the name of the judge hearing same; dates of entry of the decree; of plaintiff's petition for rehearing; of argument on petition to rehear

and of the court's taking same under advisement; of the entry of final order denying petition to rehear; of filing petition for appeal; of allowance of petition by the court and the filing of assignment of errors.

(2) Plaintiff's complaint filed May 29, 1914.

(2) Defendants' motion to dismiss plaintiff's bill of complaint, filed June 18, 1914.

(3) Memo decision denying motion to dismiss, filed October 26, 1914.

(4) Order denying motion to dismiss filed Oct. 30, 1914.

(5) Stipulation of parties with reference to payment of tender and acceptance of same, filed Nov. 6, 1914.

(6) Order upon Clerk to pay amount tendered to County Treasurer filed Nov. 6, 1914.

(7) Receipt of County Treasurer filed Nov. 8, 1914.

(8) Stipulation of parties with reference to Complaint and Amended Complaint, Amended Answer and Second Amended Answer, filed November 6, 1916.

(9) Defendants' amended answer to amended complaint filed January 18, 1915.

(10) Statement of testimony as approved by the court and filed in said cause.

(11) The following depositions taken and filed in this cause on the 30th day of August, 1915, to-wit: Testimony of R. W. Schumacher and J. P. Christensen. Testimony of J. A. Adams.

The following portions of the testimony of William Garlick: Page 27, lines 6 to 22 inclusive; page 50, line 25 to line 2 on page 51; page 52, lines 3 to 18 inclusive; page 57, lines 21 to 30 inclusive; all cross examination, re-direct examination and re-cross examination of the witness Garlick.

Testimony of Charles F. Seal, page 66, lines 6 to 13 both inclusive.

(12) The following exhibits in the case:

Plaintiff's Exhibit P being a letter from Christensen to Grasty dated April 29, 1914.

Plaintiff's Exhibit L, being letter of J. C. Hansen to Grasty.

Plaintiff's Exhibit M, letter of Clifford L. Babcock to Grasty.

Plaintiff's Exhibit N, letter from Lewis Levy to Grasty.

Plaintiff's Exhibit F, letter from Thomas Aldwell to Grasty dated April 29, 1914.

Plaintiff's Exhibit E, photographed list of appraisal of properties by Thomas Aldwell.

Plaintiff's Exhibit FF: Statement showing assessment of shingle mills in Clallam County.

Plaintiff's Exhibit T. Assessment of Olympic Power Company's property.

Plaintiff's Exhibit CC. Written statement from Henry to Grasty.

(13) Statement as to assessment of banks filed December 11, 1915.

(14) Memo decision filed January 22, 1916.

(15) Decree rendered and entered February 3, 1916.

(16) Plaintiff's exceptions to allowance of amendment of Defendants' answer and order allowing amendments filed February 3, 1916.

(17) Plaintiff's petition to rehear and modify judgment filed March 3, 1916.

(18) Journal entry showing hearing on petition to rehear entered April 18, 1916.

(19) Memo. decision upon petition to rehear filed May 11, 1916.

(20) Order denying petition to rehear filed May 15, 1916.

(21) Plaintiff's notice to defendants of the lodgment of statement of facts, filed September 1, 1916.

(22) Plaintiff's Assignment of Errors, filed October 27, 1916.

(23), Plaintiff's petition for appeal and order allowing same.

(23½) Bond on appeal and approval thereof.

(24) Citation on Appeal and admission of service thereof by the defendants.

(25) Order of court to send up original exhibits.

(All the above, 23, 24 and 25, filed Oct. 27, 1916.)

(26) Journal entry showing adjournment of term of District Court immediately preceding the term commencing the first Tuesday in May, 1916.

(27) Order of court upon stipulation of the parties with respect to settlement of the Statement of Facts, filed October 27, 1916.

(28) This Praeipe with acknowledgment of service thereon by defendants.

(29) Index to all of the above.

Dated at Seattle, Washington, this 30 day of Oct. 1916.

EARL & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiff, Appellant.

Copy of the foregoing Praeipe received this 31st day of Oct., 1916.

SANDFORD C. ROSE,
DEVILLO LEWIS,
J. E. FROST,
E. C. EWING,
JONES & RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Praeipe for Transcript on Appeal.
Filed Oct. 31, 1916.

No. 36

DEFENDANTS' PRAEICE FOR ADDITIONAL
RECORD
TO THE CLERK OF THE ABOVE ENTITLED
COURT:

You will please prepare the following additional portions of the record in the above entitled cause, and incorporate the same into the transcript of the record on appeal in the above entitled cause, to wit:

1. Defendants' answer to the amended bill of complaint filed in this court on the 20th day of November, 1914.

2. Plaintiff's motion directed against the said defendants' answer to the amended bill of complaint, entitled "Motion" and indorsed "Motion to Strike," and

filed in this court on the 30th day of November, 1914.

3. Order allowing plaintiff's motion to make more definite and certain, which was dated the 21st day of December, 1914.

SANFORD C. ROSE, Prosecuting Attorney.
DEVILLO LEWIS, Deputy Prosecuting Attorney.

J. E. FROST,
E. C. EWING,
JONES & RIDDELL,

Attorneys for Defendants.

Indorsed: Defendants' Praeipce for Additional Record. Filed November 8, 1916.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF WASHINGTON NORTHERN
DIVISION

No. 36

CLALLAM LUMBER COMPANY, a corporation,
Plaintiff, Appellant,

vs.

CLALLAM COUNTY, a municipal corporation, and
Clifford L. Babcock, Treasurer,
Defendants, Appellees

UNITED STATES OF AMERICA

to

CLALLAM COUNTY, a municipal corporation and
Clifford L. Babcock, Treasurer, Defendants
and Appellees

CITATION

A GREETING:

You and each of you are hereby notified that in a certain suit in the United States District Court for the Western District of Washington, Northern Division, wherein Clallam Lumber Company, a corporation is plaintiff and the above named Clallam County and Clifford L. Babcock, Treasurer, are defendants, an appeal has been allowed the plaintiff therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, state of California, thirty days after the date of this citation, to show cause, if any there be why the order and decree appealed from should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington, sitting in the Northern Division, this 27th day of October, 1916.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington, sitting in the Northern Division.

Received a copy of the above and foregoing Citation this 27th day of Oct., 1916.

SANFORD C. ROSE,
DEVILLO LEWIS,
J. E. FROST,
E. C. EWING,
R. S. JONES,
C. RIDDELL,

Attorneys for above named appellees.

Indorsed: No. 36. In the District Court of the United States, Western District of Washington, Northern Division. Clallam Lumber Company, a corporation, Plaintiff, vs. Clallam County, et al., Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Peters & Powell. Earle & Steinert. Attorneys for Plaintiff. Rooms 546-551 New York Building, Seattle, Washington.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION
CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Defendants.

No. 36

IN EQUITY

CERTIFICATE OF CLERK TO TRANSCRIPT OF
RECORD

United States of America, Western District of Wash-
ington, ss.:

I, Frank L. Crosby, clerk of the United States District Court, for the Western District of Washington, do hereby certify 854 printed pages numbered from 1 to 854 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, exhibits and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that said printed pages together with the original exhibits separately certified, constitute the record herein on appeal from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be the full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the complainants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record certificate or return 3509 folios at 15c	\$ 526.35
Certificate of Clerk to transcript of record, 4 folios at 15c .....	.60
Seal to said Certificate .....	.20
Certificate of Clerk to Original Exhibits, 3 folios at 15c .....	.45
Seal to said Certificate .....	.20
Statement of cost of printing said transcript of record, collected and paid.....	801.80
Total	<hr/> \$1329.60

I hereby certify that the above cost for preparing and certifying and printing record, amounting to \$1329.60 has been paid to me by counsel for complainants.

I further certify that I hereby attach and herewith transmit the original citation issued in this cause and the original Order of Court extending appellants' time to file record on appeal.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 20th day of December, 1916.

FRANK L. CROSBY,
Clerk United States District Court.

(Seal)

2

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLANTS

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Appellants.

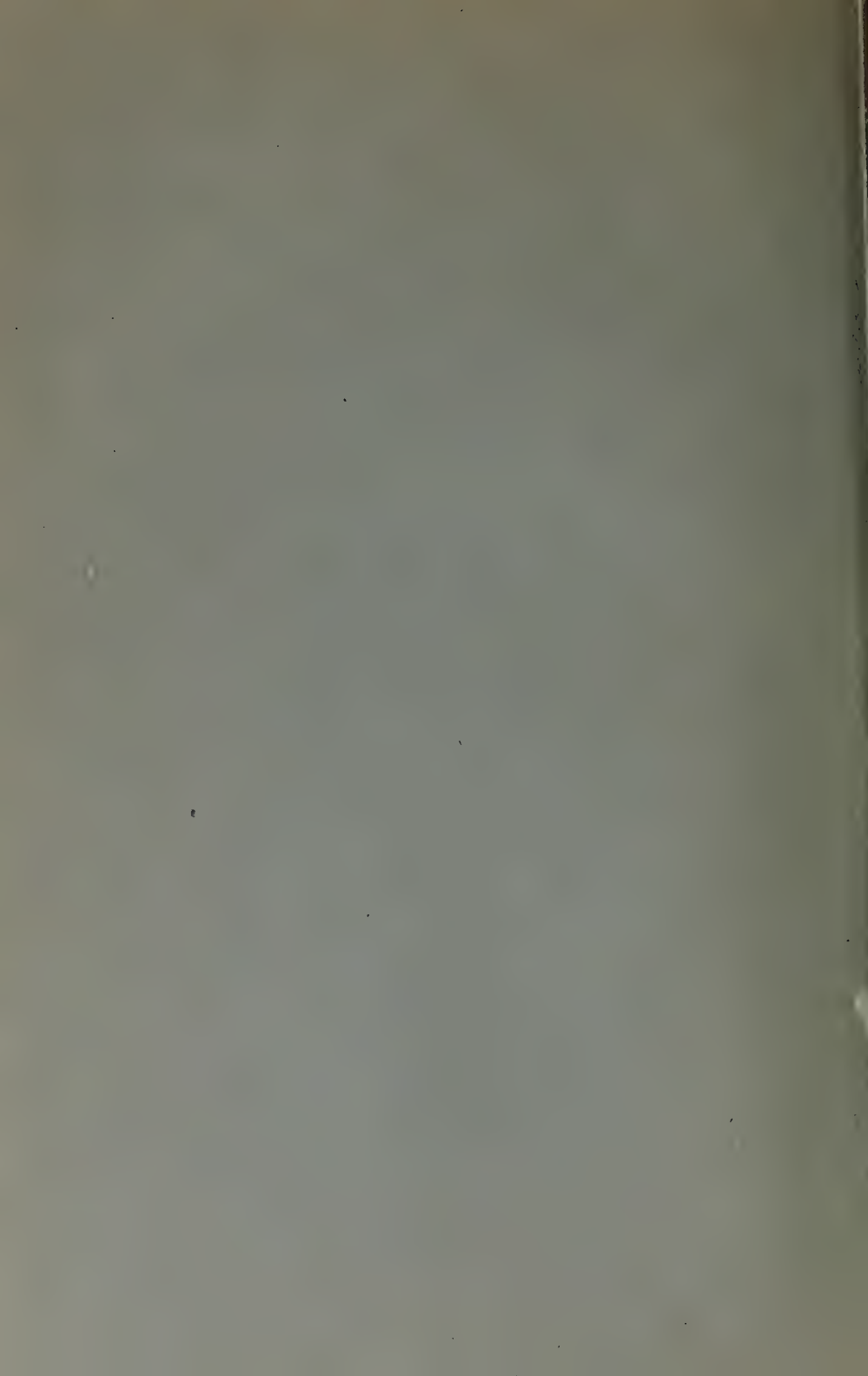
Seattle, Wash.

BUTTERFIELD & KEENEY,
Of Counsel.

Grand Rapids, Mich.

FEB 7 1917

F. D. Monckton



IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Appellees

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. Mc-
CARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Appellees

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
HERBERT H. WOOD, Treasurer,
Appellees

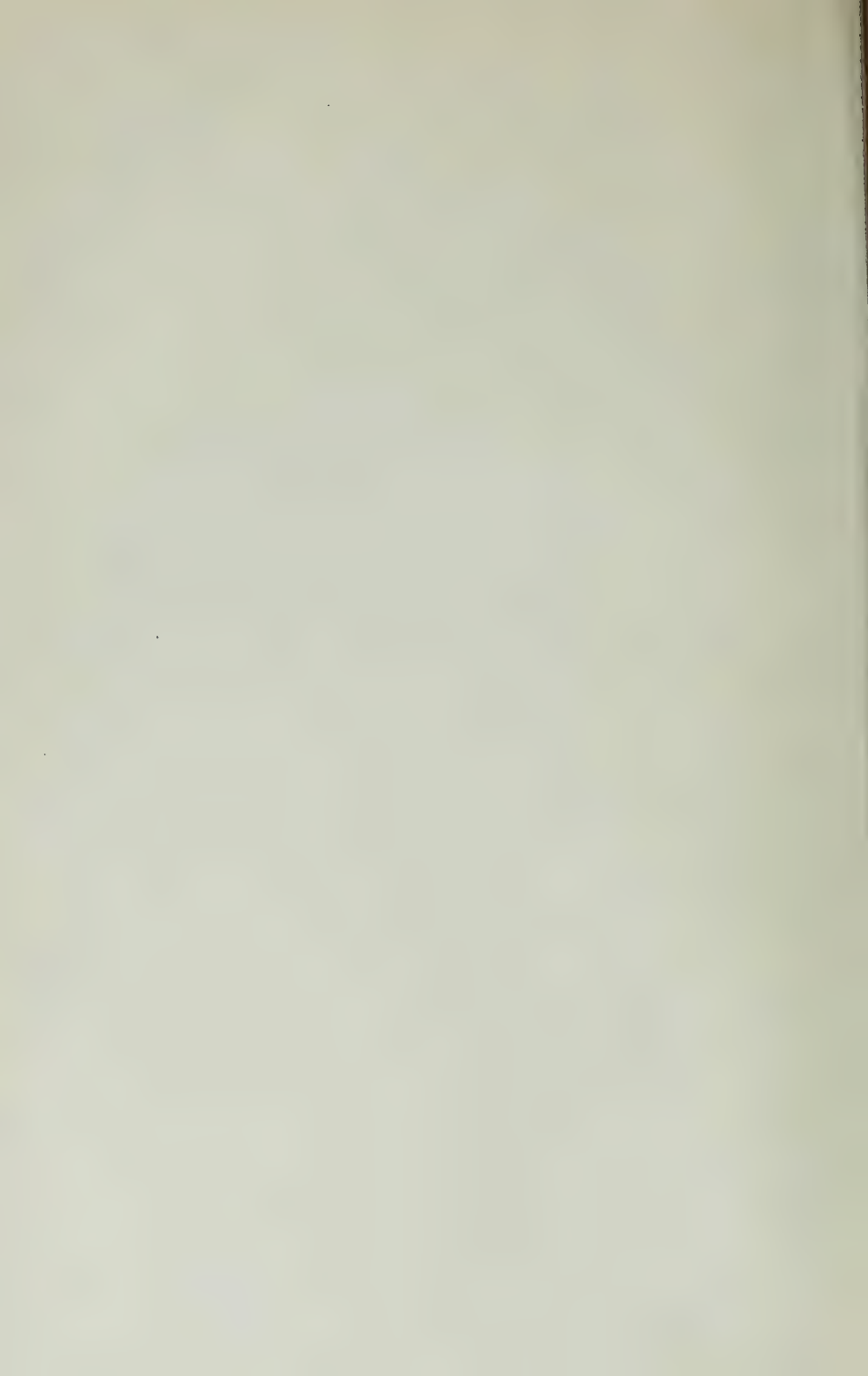
No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. Mc-
CARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
HERBERT H. WOOD, Treasurer,
Appellees

BRIEF OF APPELLANTS



As these cases arose out of substantially the same matters, were consolidated for hearing and tried below together, upon the same evidence, and the parties, appellants and appellees, are represented respectively by the same counsel, and were so represented in the court below, and as they are all controlled by the same principles of law and are so interlocked in their relations to the evidence that it would be difficult for counsel to present them separately, or for the Court to examine and review them otherwise, on stipulation of the parties under date of January 17, 1917, herein filed, we treat them under one brief.

As separate decrees were entered in each of the four cases below, we have taken and perfected separate appeals in each case. Under an order of the Honorable William B. Gilbert, one of the judges of this Court, of date December 12, 1916, and Journal Entry of this Court of January 8, 1917, confirming the same, based upon the stipulation of the appellants and appellees (Record Cause No. 2906, pages 63-64), the statement of facts and also the Court's memorandum decision were printed in the record of appeal only in Cause No. 2905, Clallam Lumber Company vs. Clallam County and Babcock, treasurer, to the record of which case, as the principal case, the references will be hereafter directed unless otherwise designated.

We will first outline the proceedings in this Cause No. 2905.

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Appellees

STATEMENT OF THE CASE

The Clallam Lumber Company, plaintiff, now appellant, a Michigan corporation, was the owner of some 41,000 acres of timber lands situated in the interior of Clallam County, Washington.

It filed its bill in the United States District Court for the Western District of Washington, Northern Division, in equity, on May 29, 1914, against Clallam County and its treasurer, to vacate and set aside the taxes which had been levied upon these lands by the county, for the year 1913, or rather such amount of these taxes as were unjust and to enjoin the issuance of delinquency certificates against said lands and the sale of the lands by the treasurer based upon the alleged fraudulent and unlawful assessment and equalization of its taxes in the manner hereinafter stated.

The following is a general outline of the bill:

It is alleged that the plaintiff was at all times

named a corporation organized under the laws of the State of Michigan and domiciled therein, but qualified to do business in the State of Washington, and that the defendant Clallam County was a municipal corporation of the State of Washington, and Clifford L. Babcock was its treasurer, and was a citizen and resident of Clallam County, Washington. Also the jurisdictional amount involved is alleged (Record pp. 4-5).

It is claimed that in assessing these lands for taxation for the year 1913, the assessor of Clallam County and Board of Equalization in equalizing the roll, grossly, arbitrarily, unlawfully overvalued them, in pursuance of a policy inaugurated by the above named officers and followed by them for a number of years prior to 1913. That it was the policy and practice to assess the timber lands which lie chiefly in the Western portion of the county at grossly higher values in proportion to their true value in money, than all other classes of property in the county, and particularly the agricultural lands and town lots in the City of Port Angeles, these lands and lots lying in the eastern part of the county.

That the western or timbered portion of the county, being lands owned mostly by non-residents, are sparsely settled, containing only a few hundred inhabitants and those settled for the great part at Forks and Quillayute Prairies. That but few of the

voters of the county reside in the west end. The county seat is the City of Port Angeles, a town of some 5,000 inhabitants, situated in the middle of the three districts of the county commissioners.

In the east district are prosperous farming communities, well settled, particularly in the vicinity of Sequim and Dungeness, the population in this district being approximately 1,500. The voting power of the county is therefore in the east and middle districts, the voters in the west district having little voice in county affairs (Record p. 13).

The assessing officers of the county, with the exception of one commissioner from the west district, are elected by the votes of those resident in the middle and east districts, a preponderance of the votes being in those districts.

The County Board of Equalization is, and for the years 1912 and 1913 was, composed of five members, three being the county commissioners and the other two the county assessor and county treasurer. During the time complained of the assessor and treasurer and the county commissioner for the middle district, the latter being chairman of the board of county commissioners, all resided in Port Angeles. The fourth member of the board resided in the east district and the remaining one member resided in the west district. (p. 15).

These members of the Board of Equalization resident in Port Angeles were themselves owners of property at Port Angeles.

It is charged that in order to favor themselves and their constituents at Port Angeles, and to place the burden of taxation upon the timber lands owned chiefly by non-residents, the assessor and the three members of the Board of Equalization resident at Port Angeles had conspired with the east end commissioner to put low valuations upon property at Port Angeles and in its vicinity, and high and unequal values upon timber lands situated in the west end of the county, and particularly upon the timber lands of the plaintiff and other timber lands in the interior of the county (p. 16).

The City of Port Angeles is located on tide water harbor, which it was and is the desire of its inhabitants, may become the seat of considerable commerce. To this end it was the desire of these citizens that the timber owners of the county build mills at Port Angeles, construct railroads into the interior, transport logs from the interior to Port Angeles and there saw them into lumber, thereby adding to the growth and development of Port Angeles.

It is charged that it was the purpose of the assessing officers of Clallam County, representing as they believe the sentiments of the voters at Port Angeles

and the eastern district of the county, to assess the timber lands in the west end of the county at exorbitant sums, as a means of compelling the owners to cut the timber, build railroads and mills and aid the development of the county as aforesaid. Through influential citizens of Port Angeles the plaintiff has been assured that if it would begin to operate its timber and employ a considerable number of men, it might rely that it would thereafter be fairly and equitably treated as respects taxation (p. 18).

The plaintiff's lands lie in the valleys of the Solduc and Calawa Rivers and upon the benches and ridges between the same.

These lands are at present wholly destitute of facilities for transportation and it is impossible to bring this timber into the market. For this purpose it would be necessary that facilities be provided for transportation to Grays Harbor on the south or to the Straits of Fuca on the north. Grays Harbor is far distant, no railroad from that direction extending farther north than Moclips, a distance of more than sixty miles from these lands.

Few of the plaintiff's lands are less than twelve miles from the straits and most of them lie a still greater distance therefrom, and all of the plaintiff's lands are cut off from the straits by a range of mountains running east and west through the county. The

expense of building the necessary railroad to transport these logs over the mountains is very great, is beyond any present means of the plaintiff, and would not be justified by any present condition of the lumber market, or any which has heretofore existed on the Pacific Coast.

On the Straits of Fuca, however, and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time; extensive logging operations have for many years been carried on and are now being carried on in this portion of Clallam County lying immediately upon the straits (p. 17).

In assessing the timber lands the assessing officers had divided them into zones or districts, assessing all timber lands lying in one district at the same valuation per thousand feet. These zones were laid off without reference to the real value of the timber lands within them, and without regard to any elements which would go to make up any uniformity of value and without regard to the system of cruises which the county had made and adopted some six years previously on its timber lands, but were wholly arbitrary, unjust and unlawful and resulted in the assessment of plaintiff's timber lands and other interior timber lands at a valuation much greater in proportion to their real value, than the timber lands lying along the straits

tributary to tide water and operating railroads and presently marketable (pp. 6-11).

That this discrimination against the plaintiff's lands and in favor of the straits lands and other timber lands being now operated was designed to force the plaintiff and other owners of idle timber lands to cut and operate, for the reasons previously alleged.

It is charged that it had been for some years the custom, practiced throughout the State of Washington by assessors and taxing boards, to assess property at less than its actual and full value; the custom in most of the counties being to assess property at from 35 to 50 per cent of its true value, which custom has been acquiesced in by the State Board of Equalization. That the assessing officers of Clallam County proclaim and pretend that for the year 1913 they assessed the assessable property within the county and equalized the same upon the basis of 53 per cent of its true and fair value in money, but in truth lands and other property at Port Angeles were assessed and equalized at not to exceed 10 to 20 per cent; the farming lands and other properties situated in the east end of the county at not to exceed 25 to 30 per cent, and personal property at from 10 to 15 per cent; while the timber lands of the interior were assessed and equalized at sums greatly in excess of 53 per cent, and plaintiff's lands, being in the interior, at nearly 83 per

cent of their true and fair value in money (pp. 11, 16).

It was further charged that under the Statutes of Washington, Section 9112 of Volume III, Remington & Ballinger's Codes, it was provided that all property shall be assessed at not to exceed 50 per cent of its true and fair value in money (p. 20).

It is charged that the plaintiff had appeared before the County Board of Equalization at its session in 1912, as well as in 1913, and had protested against the amount and manner of the assessment of its lands, but to no avail; that the review by the Board of Equalization of the assessment roll was ostensible and specious only, the members of the board having already combined and conspired with the assessor to make the unjust and unequal assessment, upon the basis and for the fraudulent purposes hereinbefore alleged; that said protests were arbitrarily overruled by the board (p. 22).

It is alleged that the true and fair value in money of the plaintiff's lands at the time of their assessment did not exceed \$2,050,000, and that under the custom followed by the taxing officers in respect to other classes of property, and under the law of the state, its lands should not have been valued for taxation at a sum greater than \$1,025,000, but that the taxing officers of the county in disregard of the law and for the fraudulent purposes aforementioned had

valued these lands at a sum exceeding by at least \$686,505 the 50 per cent of their true and fair value in money (p. 20).

That the taxes so levied for the year 1913 against the plaintiff's lands aggregated \$50,049.59, whereas had such taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded \$30,000; so that by the fraudulent and unlawful practices of the assessing officers complained of, there were unlawfully imposed upon these lands described in a schedule attached to the bill, taxes for the year 1913 to the amount of at least \$20,049.59 in excess of all taxes which might be lawfully imposed on them (p. 21).

That on May 27, 1914, the plaintiff had tendered to the county treasurer the sum of \$30,000 in payment of its taxes and had tendered and paid the same into court, and offered to pay any further sum that might be found just by the court (p. 24).

It is further alleged by the bill that this method of assessment of plaintiff's lands is in violation of Section 2, Article 7 of the Constitution of the State of Washington, and of Section 1, Article 7, providing for uniformity of taxation, and is in defiance of the 14th Amendment of the Constitution of the United States, as denying the plaintiff equal protec-

tion of the law and depriving it of its property without due process of law (pp. 25-26).

It is set out that it is the duty of the treasurer under the state law, having received the moneys so taxed, to pay the same in certain defined proportions, to the various road, bridge and other funds, to the City of Port Angeles and to the State of Washington, to recover back which payments this plaintiff would have to resort to a multiplicity of suits, and unless it obtained its remedy in this suit could not recover back from the state, and plaintiff would suffer great and irreparable injury, and that plaintiff is remediless at law and relievable only in equity (Bill XXXI-A, p. 81), and unless the treasurer was restrained he will by law proceed to issue delinquent certificates against these lands for the ultimate sale thereof, which would cloud the title to the lands, and which said lands are vacant and unoccupied (p. 23).

The bill prays that the taxes unlawfully assessed upon the plaintiff's lands be canceled and set aside, or the excess thereof over the amount of \$30,000 tendered by plaintiff, or the excess over such amount as the court finds to be just and lawful; and that the county and its treasurer be enjoined from enforcing the unlawful tax by the sale of plaintiff's lands or otherwise; and for general relief (pp. 26-28).

The defendants moved to dismiss this bill for want of equity, laches and acquiescence of the plaintiff, and because of the alleged existence of a plain, speedy and adequate remedy at law under the statutes of the state (Record p. 47).

This motion was heard by the court upon the merits and denied (Record p. 48).

The plaintiff, on December 9, 1914, filed an amended bill, which was, however, in all respects substantially similar to the original bill, except for a more accurate statement of the run of timber and acreage of plaintiff's lands in certain zones (Stipulation, Record, pp. 79 to 82).

The defendants thereupon filed an answer to the amended bill (Record pp. 51 to 56), to which the plaintiff directed a motion to strike certain portions thereof and to make more definite and certain. This motion being allowed, defendants filed an Amended Answer to the Amended Bill (Record pp. 58 to 79).

This Amended Answer is substantially as follows:

The allegations of the bill as to jurisdictional matters, corporate existence of plaintiff and defendant and official capacity of defendants, are admitted, as likewise the ownership, acreage and geographical location of the plaintiff's timber lands (Record, pp. 58, 59).

It is admitted that most of the privately owned

lands in the county have been cruised and the cruises adopted by the county, and that the assessing and equalizing officers claim to have assessed and equalized the timber lands upon the basis of said cruises and estimates (Record p. 59, par. VI).

It is admitted that the timber lands have been divided into zones or districts for the purpose of assessment, but denied that these have been formed arbitrarily, unlawfully or unreasonably or without regard to the true and fair value in money of the timber on the lands in the various zones, or in any other manner than fairly, impartially and as the result of the honest judgment of the assessing officers formed upon full information after careful inquiry and investigation.

The defendants admit generally the geographical location of the zones, as plead by the plaintiff, with reference to the county boundaries and with reference to each other. They admit the plaintiff's ownership of acreage of land and stumpage of timber in the various zones, to the amount and extent claimed in the bill, and that the lands in these zones were valued in the amounts and taxed in the amounts as claimed in the bill; but deny the remoteness of plaintiff's lands from the outlets, and the non-existence of harbors on the Pacific Ocean in Jefferson or Clallam County, through which the plaintiff's timber might be brought to market.

They deny that a range of mountains separates the plaintiff's lands or the Solduc Valley from the Straits (Record pp. 60 to 63, pars. VII to XII A).

They deny the alleged existence of the custom and practice by the assessors and taxing boards of assessing property at from 35 to 50 per cent of its true value, or the recognition of such practice and acquiescence therein by the State Board of Equalization.

They deny "That the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, or upon any other or different basis than that provided by the laws of the State of Washington, at the time the assessments for the years 1912 and 1913 were made; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved assessments upon taxable property within said county upon the basis alleged in said paragraph, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; admit that the interior timber lands in said county, including the lands owned by the plaintiff, were and are valued in the year 1913 for purposes of taxation at sums in excess of 53 per cent of the true and fair value thereof in money; deny

that other properties in said county, real and personal, were valued at sums less than 53 per cent of the true and fair value thereof in money; deny that the plaintiff was discriminated against grossly, or intentionally, or at all, by the assessing officers of Clallam County in the matter of assessment and taxation of its lands for the year 1913." (Record pp. 63, 64, par. XIII).

They admit that the valuations placed by the assessing officers of Clallam County upon the plaintiff's lands for the purpose of taxation for the year 1913 amount to the figures set forth in the bill, but deny that the true and fair value in money of said lands did not exceed the sum of \$2,050,000 in the year 1913; deny that the assessment of plaintiff's lands for that year was made upon the basis of $83\frac{1}{2}$ per cent, or upon any other or different basis than the true and fair value in money of the property assessed. Deny that no other property in Clallam County, except the timber lands owned by the plaintiff and certain other timber lands similarly situated, were assessed in the year 1913 at so great a proportion of their true and fair value in money and deny that the assessment upon the lands of the plaintiff or upon any other lands or property in the county, was in pursuance of any combination or conspiracy between the assessor of Clallam County and other members of the County

Board of Equalization as alleged in the bill, or at all (Record p. 64, par. XIV).

They admit the distribution of the taxable property in Clallam County, substantially as alleged by the bill, namely, the timbered property in the western part of the county, the urban property and population in the town of Port Angeles and agricultural lands and the farming communities in the eastern part of the county, and the voting power of the county as in the eastern part thereof (Record p. 65, par. XV).

They admit the election of the assessing officers of Clallam County by the voters in Port Angeles and the eastern part of the county by reason of a preponderance of these votes, but deny any combination or concert of these officers for any improper purpose whatever, and deny that the assessment roll of 1913 did not represent the judgment of the assessor or that it was the result of any combination or conspiracy; deny that the roll is approved as a mere matter of course, or that no fair hearing is to be had upon it on an appeal, or that the plaintiff was refused a hearing before the board in 1910. They admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as alleged by the bill, but deny any unlawful combination or concert on their part (Record p. 66, par. XVI).

They deny that the lots and other property situated in Port Angeles are valued upon the assessment roll as equalized for the years complained of at not to exceed 10 to 20 per cent of their true and fair value in money, and that the farming lands and other properties situated in the east end are valued upon said rolls at not to exceed 25 to 30 per cent of their true and fair value, and that personal property within the county was valued by the assessing officers at not to exceed 10 to 15 per cent of its true and fair value (Record pp. 66, 67).

They deny that the plaintiff's lands are wholly destitute of facilities for transportation and that it is impossible to bring the timber therefrom into the market; deny that the plaintiff's lands are as distant from the Straits of Fuca as stated in the bill or that the lands are cut off from the straits by a range of mountains or that it is impossible to bring the timber from said lands except by transportation across the range of mountains; and deny that the transportation of plaintiff's timber by building a railroad or otherwise would be at so great an expense as to be prohibitive under the present condition of the lumber market.

They deny generally and specifically the allegations of a combination or of discrimination on the part of the assessing and equalizing officers and that the plaintiff's lands were assessed or taxed in any

sum greater than was legally and honestly proper and due, and deny any discrimination in favor of one class of property over another, or of property in one part of the county over that of another (Record pp. 70, 71).

They admit the ownership of the lands by the plaintiff and that the same are vacant and unoccupied. (XVIII-A, p. 72.)

They admit the duties of the treasurer of Clallam County with reference to the disposition of taxes collected, as stated in the bill, but deny that if plaintiff instituted suit to recover back taxes paid by it, it would be obliged to bring suit against each one of the taxing bodies therein mentioned, and deny the consequent necessity for a multiplicity of suits, or that the portion of the taxes going to the State of Washington could not be collected back, or that repayment from the town of Port Angeles would not cover costs and other items referred to, or that the plaintiff would thereby be subject to great and irreparable injury or that the plaintiff would not have a complete, adequate or any remedy at law.

They admit the duties of the treasurer of Clallam County with reference to the issuance of certificates of delinquency against plaintiffs lands as alleged, but deny that this constitutes a cloud thereon. (Record p. 72, par. XXVIII B.)

They admit the tender as plead by the plaintiff, but deny that the amount so tendered is equal to the taxes due; they deny that the assessment of plaintiff's lands was in violation of the provisions of the Constitution of the State of Washington, or of the Federal Constitution, as plead by plaintiff's bill; and deny that the plaintiff is remediless at common law, or is relievable only in a court of equity, as alleged in the bill. (Record pp. 72, 73.)

And as further affirmative defenses, the defendants plead as follows: (Record pp. 73 to 79.)

I.

That the true and fair value in money of timber and timbered lands is dependent, among other factors, upon the character and quality or grade of timber, the thickness of the stand of timber or quantity per acre or upon a given tract, the topography of the ground upon which the timber stands, the presence of water for use in camps, logging engines and locomotives, the probability of fires, the size and contiguity of the tracts of land, large tracts or contiguous tracts constituting practically solid bodies of land containing sufficiently large quantities of timber to constitute profitable logging enterprises being commercially more valuable per acre or per M. feet than smaller or isolated tracts not sufficient in size to warrant the con-

struction of roads, railroads, camps and other facilities necessary to the removal of the timber.

The lands of the plaintiff, referred to in its amended bill of complaint herein, consist of large and practically solid bodies, bearing timber of valuable character, of exceptionally high grade and quality and of thick and heavy stand, and constitute desirable, advantageous and profitable logging enterprises from an operating standpoint, making the same proportionately more valuable than smaller or isolated tracts of timbered lands in the same localities, or otherwise similar in character to the lands of the plaintiff.

II.

That on or about the year 1908 the assessing officers of Clallam County caused to be employed experienced, capable and competent timber cruisers to make, and who did make, full, complete and detailed cruises and estimates of the character, quality and quantity of the timber standing upon the various legal subdivisions of land in said county. All of the timbered lands in said county in private ownership, including the lands of the plaintiff, have now been so cruised and platted into tracts or zones, and detailed reports and estimates of such cruises made and filed in the office of the county assessor of said county respecting the same. These reports, estimates and plats, taking into due consideration the factors of value

hereinabove set forth, and also the availability, ease or difficulty of logging, and physical characteristics of the lands, together with such other information with reference to agricultural possibilities of the lands, the presence of mineral deposits and other similar factors of value as the assessing officers were able to obtain upon independent investigation, were and have been consulted and used by such officers to assist in ascertaining and determining the value of said lands for the purposes of assessment and taxation, and such facts, plats, estimates, reports, data and other information, with due attention to geographical location, availability, physical characteristics of the ground, and other elements influencing the values of timber and timbered lands, as hereinabove set forth, were carefully considered by such officers in making the assessments referred to in the plaintiff's amended bill of complaint herein.

The assessments thus made, and as hereinafter referred to, were not arbitrary, capricious, unlawful, unreasonable, inequitable, disproportionate, or the result of any combination or conspiracy whatsoever, as alleged in the plaintiff's amended bill of complaint herein, or at all, but were the results of the honest, sincere, conscientious, mature and deliberate judgment and belief of the assessing and equalizing officers of said county formed upon and after full and careful

investigation of all the facts and circumstances surrounding said lands and affecting their values, as hereinabove set forth and a full, free, and fair hearing as required by law.

III.

That by the laws of the State of Washington in force, and effect at the time the assessments for the years 1912 and 1913 complained of in plaintiff's said amended bill of complaint were made, and prior thereto, as hereinafter set forth, it was and is provided:

(Laws of 1897, Chapter LXXI.)

§1. That all real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation upon equalized valuations thereof, fixed with reference thereto on the first day of March at twelve o'clock meridian, in each and every year in which the same shall be listed, and

§2. That real property for the purposes of taxation shall be construed to be the land itself, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property, for the purposes of taxation, and

§6. That all real property in this state subject to taxation shall be listed and assessed under the provisions of this act in the year 1900 and biennially thereafter on every even numbered year with reference to its value on the first day of March preceding the assessment, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the County Board of Equalization in the preceding year, and

§42. That all property shall be assessed at its true and fair value in money; that the assessor shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made; that in assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; in valuing any property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash.

IV.

That the assessment for the year 1913, complained of in the plaintiff's amended bill of complaint, was

the assessed and equalized value of the plaintiff's lands for the year 1912, upon which the plaintiff paid all taxes levied and assessed without protest; that the assessments of the lands of the plaintiff, described in its said amended bill of complaint, based upon the cruises of timbered lands in said county, as herein set forth, began and were made in the year 1910, and were used and consulted and adopted in 1911 and 1912, and have continued ever since; that the plaintiff, as alleged in its said amended bill of complaint herein, paid without protest all of the taxes levied upon its said lands for the years 1910, 1911 and 1912.

V.

That the methods and bases upon which, and the laws of the State of Washington under which, the assessments of timbered lands in Clallam County, including the lands of the plaintiff, have been made since the year 1910, have at all times since that date been known to and acquiesced in by the plaintiff.

VI.

That under the laws of the State of Washington all taxes for state, county, municipal and other purposes are levied in specific sums and charged directly to the respective counties of said state; the rate per centum necessary to raise the taxes so levied in dollars and cents is computed and ascertained by the

county assessor of each county; that after taxes are thus levied, neither the county nor the property therein can be relieved of the duty of the payment of such taxes; that deficiencies owing to a reduction in the amount of taxes to be paid by any property owner or taxpayer, or to a failure to collect taxes for any reason, are by the laws of said state required to be added to, made up and collected under future assessments and levies, all of which is known to the plaintiff.

That the lands of the plaintiff, as admitted by the allegations of its amended bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiff, and upon which the taxes and assessments have been paid by the owners thereof.

That under the laws of the State of Washington, county boards and officials are prohibited and are without authority to remit or grant refunds of taxes paid, all of which is known to the plaintiff herein; that plaintiff neglected and delayed to take proper or any steps or to bring any suit or other proceeding to correct the alleged inequitable assessments referred to in its said amended bill of complaint herein, until after the larger portion of the taxes levied upon other lands similar in character and similarly located to the

lands of the plaintiff had been paid, and if relief as prayed for in the plaintiff's said amended bill of complaint is granted, other owners of property similar in character and similarly situated to the lands of the plaintiff in said county, will have been for the year 1913, and in the future will be, compelled to pay an unjust and unfair proportion of the taxes levied upon property in said county.

VII.

That by reason of the premises, and the facts and circumstances hereinabove recited, the plaintiff has been and is guilty of laches, and is precluded and estopped to question or deny the legality, fairness or correctness of the assessment and levy of taxes upon its said lands for the year 1913, and it cannot, in equity or good conscience, now be heard to complain thereof.

SECOND AFFIRMATIVE DEFENSE.

And for a second and further affirmative defense to the cause of action set forth in the plaintiff's amended bill of complaint herein, the defendants allege:

I.

That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the

same and make them a part of this second affirmative defense.

II.

That Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington was not, and did not become, the law of the State of Washington until on and after the 12th day of June, 1913, subsequent to the time when the assessment of the lands of the plaintiff complained of in said amended bill of complaint was made, and therefore did not govern or apply to the said assessment of the plaintiff's lands.

Upon these pleadings, that is, the amended bill and amended answer to amended bill, the parties went to trial, upon the testimony of witnesses and proofs made before Hon. E. E. Cushman, Judge, sitting in equity:

This cause, together with the other three causes, Nos. 2906, 2907 and 2908, were consolidated for trial, tried, argued and submitted together. On January 22, 1916, Judge Cushman handed down a memorandum decision set forth in the Record, pp. 792-826, of cause 2905, holding substantially that the plaintiffs had failed to sustain the charges of actual fraud or conspiracy on the part of the assessing and taxing

officers of Clallam County or such arbitrary, unlawful or discriminative acts as to entitle them to relief and ordering the cases dismissed. (Pp. 792-826.)

In pursuance whereof a separate decree was rendered and entered in each case on February 3, 1916.

The decree in this case, No. 2905, provided for a credit by the County of Clallam upon the taxes levied upon the plaintiff's lands, in the sum of \$29,400, to be apportioned amongst said lands in the manner set out in the decree; for dismissal of the suit with prejudice and a judgment for costs (Record pp. 826 to 828). This matter of credit arose in the following manner:

Plaintiff had paid into court the amount of its tender, \$30,000 (Record pp. 49, 50) on November 7, 1914. This sum less the commission to the clerk of the District Court, \$600, was, on stipulation of the parties, paid over to the County of Clallam and receipted for as a payment pro tanto without prejudice to the contention of either party (Record pp. 49, 50), hence the above credit.

Within thirty days of the entry of the decree, to-wit: on March 3, 1916, the plaintiff served upon the defendants and filed in the District Court its petition to rehear (Record, pp. 831, 832).

At this same term this petition was entertained

by the court, argued and submitted April 18, 1916. (Record p. 832).

On May 15, 1916, an order was entered denying this petition to rehear (Record p. 934).

Thereupon this plaintiff appealed from the decree, obtaining allowance therefor, and perfecting the same with cost bond on October 27, 1916 (Record pp. 843-845), upon the following assignments of error then filed (Record pp. 837 to 843).

ASSIGNMENTS OF ERROR.

I.

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross-examination of the witness, Thomas Aldwell, a witness for the plaintiffs on the value of the Olympia Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiff objected. The objection was overruled, and the witness answered (plaintiff reserving and being allowed an exception).

"I think around Port Angeles they were very optimistic."

"Q. (By defendants' counsel). In other words

the general impression was that your dam and power site was a failure up there?"

To this plaintiff objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

II.

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross-examination of the witness Aldwell, a witness for the plaintiff, as to the value of town lots in Port Angeles in March of 1913 and 1914:

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars' worth of Port Angeles property that he had for double its assessed value, to which the plaintiff objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the court was error.

III.

Because the court erred in admitting the testi-

mony of the defendants' witness, C. M. Lauridsen, under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by the plaintiff on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the court, an exception taken by plaintiff and allowed by the court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being defendants' Exhibit 29.

II.

Because the court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q. That property, according to Mr. Ware's testimony, was worth \$6,000 on the first of March, 1914. Will you state what you paid for it?"

“A. I paid \$2,500 on the 13th of March of that same year.”

To which ruling the plaintiff excepted and its exception was allowed by the court.

III.

Because the court overruled the objection of the plaintiffs to the following question put by the defendants to their witness, C. M. Lauridsen:

“Q. State the facts about the purchase of Lot 18 in Block 54 and Lots 7 and 14 in Block 172.”

To which the witness answered:

“Lot 18 in Block 51 I bought in January for \$300.” Lot 7 and Lot 14 in Block 172 the witness says he purchased for \$175.

To which ruling the plaintiff excepted and its exception was allowed by the court.

IV.

Because the court erred in sustaining the exception of the defendants to the following question put by the plaintiffs to one of the defendants, Clifford L. Babcock:

“Q. Again in section 18 of your answer you say ‘Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation

upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent of their true and fair value in money.' Could you state then what you had in mind at that time as the rate at which they were assessed?"

To which ruling the plaintiff excepted and its exception was allowed by the court.

V.

Because the court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer, in the following particulars, to-wit:

(a) In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties, and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they "Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the State Board of Equalization," meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value.

(b) In their former answer they had denied "that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made.*"

In their second amended answer they omit all of that portion above in italics.

(c) In their first amended answer, paragraph XIII, they plead as follows:

"Admit that the interior timber lands in said county, including the lands owned by the plaintiff, were and are valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money."

In their second amended answer they deny this allegation.

To this amendment plaintiff objected at the time, but said objection was overruled and an exception allowed by the court.

VI.

Because the court allowed the defendants, over the objection of the plaintiff then made at the con-

clusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer, the defendants had alleged in paragraph XIV thereof the following:

“Deny that said assessment for the year 1914 was made upon the basis of $83\frac{1}{2}$ per cent *or upon any other or different basis than the true and fair value in money of all property assessed.*”

Whereas the second amended answer contains the same denial, omitting, however, the words above in *italics*.

Plaintiff reserved an exception to this amendment at the time, which was allowed by the court.

(b) In their first amended answer, in paragraph XXI thereof, they alleged: “That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the straits as stated,” while in their second amended answer they *deny* that said timber can readily be logged to the straits as stated.

To this amendment and to the allowance thereof the plaintiff at the time reserved an exception, which was allowed by the court.

VII.

Because the court erred in decreeing that the

taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to-wit, in the sum of \$50,049.59 (or in any sum in excess of \$30,000.00) were legal and valid.

VIII.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

IX.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its bill, was not in excess of \$30,000.00 and that the plaintiff had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of \$50,049.59 were grossly in excess of the true and just assessment against said lands for said

year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XI.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$30,000.00 tendered by the plaintiff, and to cancel from said lands the balance of said taxes.

XII.

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles and in failing to cut down the amount of the tax levy, as provided in the decree, by at least the sum of \$8,955.56.

XIII.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XIV.

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

XV.

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complaint.

XVI.

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1913 taxes, in the sum of \$50,049.69, whereas a just and fair assessment of such lands did not exceed the sum of \$30,000.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff's and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

No. 2907.

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff-Appellant,

vs.

CLALLAM COUNTY and HERBERT H. WOOD,
Treasurer, *Defendants-Appellees.*

This cause involved the assessment of the same lands as in 2905, but for the year 1914, the lands being

assessed as of March 1, 1914, equalized October, 1914, and payable June 1, 1915.

Suit was commenced by bill filed in the district court, March 6, 1915.

The pleadings and proceedings were in all material particulars the same as in the cause No. 2905. The bill in this case corresponding to the amended bill in 2905 and the answer here to the amended answer to amended bill in the former case, save that for this year the assessed value of fir, spruce and cedar had been increased in all zones by 10 cents per thousand feet, hemlock by 5 cents per thousand in zones 2 and 5, otherwise unchanged. (See zone map, Exhibit A, also records 2907, pp. 6-10).

It is claimed in this case that the aggregate value of plaintiffs lands did not exceed \$2,050,000, in the years 1912, 1913 and 1914; that they should not have been assessed at a valuation of over 50 per cent of this, or \$1,025,000, the tax upon which would not have exceeded the sum of \$25,466.00, whereas they were taxed \$42,960.78, or an unlawful excess of \$17,494.78 (p. 21).

Tender of this amount, \$25,466.00, was made, refused, and kept good, but not paid over to the county as in cause 2905 (p. 25).

Accordingly, the decree entered in this cause,

February 3, 1916, (Record p. 78) ordered the suit dismissed without credit for any payment.

The further proceedings in this as to petition to rehear, settlement of statement of facts (p. 85), and all other matters were the same, and appeal perfected at the same time as in 2905.

At Record (p. 76) appears the order of Hon. Wm. B. Gilbert, on stipulation of parties permitting the omission to send up and print the record of testimony and memorandum decision in this cause.

The assignments of error were the same as in case 2905 (Record pp. 86-90), save as to the excess of unlawful tax, which is set out in the following assignments:

IX.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiff described in the complaint, being, to-wit: in the sum of \$42,960.78 (or in any sum in excess of \$30,000.00) were legal and valid.

X.

The court erred in adjudging and decreeing the bill of the plaintiff dismissed and a judgment against the plaintiff for costs.

XI.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its bill, was not in excess of \$25,466.00, and that the plaintiff had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1914, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

XII.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1914, against the lands of the plaintiff, in the sum of \$42,960.78, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XIII.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiff to pay said amount with the

credit of \$25,466.00 tendered by the palintiff, and to cancel from said lands the balance of said taxes.

XIV.

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy as provided in the decree by at least the sum of \$7,335.34.

XV.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XVI.

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

XVII.

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complaint.

XVIII.

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1914 taxes in the sum

of \$42,960.28, whereas the just and fair assessment of such lands did not exceed the sum of \$26,466.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

No. 2906.

CHARLES H. RUDDOCK and TIMOTHY H. Mc-
CARTHY, *Plaintiffs and Appellants,*
vs.

CLALLAM COUNTY and CLIFFORD L. BAB-
COCK, Treasurer, *Defendants and Appellees.*

This cause challenged the assessment of lands for the taxes of 1913. The plaintiffs were each of them citizens and residents of the State of Luisiana. Their lands aggregated 7,941.06 acres, and were all situated in zone No. 2, shown in yellow on Exhibit A (zone map), or in shaded type on map A, attached to brief.

Suit was brought May 29, 1914.

The pleadings, issues and proceedings in this cause were the same as in case 2905, save that the

aggregate of assessment against these lands for 1913 was \$479,990.00 (Record 2506 p. 8). It is claimed that the total assessable value of these lands March 1, 1912, did not exceed the sum of \$550,000.00; that under the laws of the state and under the practice applied to all other property in the county they should not have been assessed at more than \$275,000.00, but were assessed at 479,990.00, an excess of \$204,990.00.

That this produced a tax of \$15,809.00, as against the sum of \$9,250.00, which should have been the maximum tax, thus making an illegal excess tax of \$6,559.00. (Record p. 17).

The plaintiffs had tendered this sum, to-wit: \$9,250.00 to the county treasurer, May 28, 1914, and paid it into court (p. 19). Thereafter on stipulation of the parties and order of the court, this sum was paid over to the county without prejudice to the rights or contentions of the parties. (Pp. 61-63).

Decree was entered February 3, 1916, ordering the county to credit this sum of \$9,065.00, being the tender paid in, less clerk's commission, toward the taxes on the plaintiffs lands for 1913 pro tanto, in the manner in the decree set out, and dismissing the cause.

The further proceedings in this case No. 2906 as to petition to rehear, settlement of statement of

facts and all other matters were the same, and appeal perfected at the same time as in case No. 2905 (Record pp. 69-83).

In Record p. 63, appears the order of Hon. Wm. B. Gilbert, on stipulation of the parties, permitting this cause to be heard on record of evidence printed in cause No. 2905.

The assignments of error were the same as in case No. 2905 (Record pp. 73-77), save as to the excess of unlawful tax, which is set out in the following assignments, to-wit:

VII.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being, to-wit: in the sum of \$15,809.00 (or in any sum in excess of \$9,250.00) were legal and valid.

VIII.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against plaintiffs for costs.

IX.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was

not in excess of \$9,250.00 and that the plaintiffs had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiffs, in the sum of \$15,809.00, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XI.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$9,250.00, tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XII.

Because the court erred, under the evidence, in

failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy, as provided in the decree by at least the sum of \$1,007.41.

XIII.

Because the evidence showed that the allegations of the amended complaint were true and that the allegations of the second amended answer were not true.

XIV.

Because the court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XV.

Because the court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the amended complaint.

XVI.

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint, were assessed by Clallam County for the year 1913 taxes, in the sum of \$15,809.00, whereas a just and fair assessment of such lands did not exceed the sum of \$9,250.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as

against the plaintiffs' and other timber lands, and in favor of all other classes of property in Clallam County, and that said fraudulent conspiracy had been carried on for a number of years prior to the time of such assessment.

No. 2908.

CHARLES H. RUDDOCK and TIMOTHY Mc-
CARTHY, *Plaintiffs-Appellants*,
vs.

CLALLAM COUNTY and HERBERT H. WOOD,
Treasurer, *Defendants-Appellees.*

This cause concerns the taxes upon the same lands as in the last case, but for the year 1914, the lands being assessed as of March 1, 1914, equalized October, 1914, and payable June 1, 1915.

Suit was commenced in the district court by suit filed March 6, 1915.

The pleadings and proceedings were in all material particulars the same as in the three preceding causes, the bill in this case corresponding to the amended bill in cause 2905, and the answer here to the amended answer to amended bill in 2905—save that for this year the assessed value of fir, spruce and cedar had been increased in this zone No. 2 from 70 cents per thousand feet to 80 cents, and the hemlock from 35

cents to 40 cents. (Exhibit A, zone 2) (Record p 6).

It is claimed in this case that while the aggregate valuation of plaintiff's lands did not exceed \$550,000.00 March 1, 1914, and that under the law of the state and the practice of the county with respect to other property, they should not have been assessed at more than 50 per cent of this value of \$275,000.00, they had in fact been assessed at \$561,395.00 (Record p. 8), being 102 per cent of their actual value; that the taxes should not have exceeded \$6,905.00, but they did in fact amount to \$14,095.00, being an unlawful excess of \$7,190.16. (P. 17).

On February 24, 1915, the plaintiffs tendered this amount of \$6,905.00 to the county treasurer, and upon its refusal has kept the tender good. (P. 19).

Accordingly, the decree entered in this case February 3, 1916 (p. 55), ordered the suit dismissed without credit for any payment made.

The further proceedings were taken in this case as to petition to rehear (pp. 59-62), settlement of statement of facts, order for submission on the record of evidence in cause No. 2905, as in the preceding cases Nos. 2906, 2907.

The assignments of error were the same as in the preceding cases (pp. 63-69), save as to the amount

of excess of unlawful tax, which is set out in the following assignments:

IX.

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being, to-wit: in the sum of \$14,095.67 (or in any sum in excess of \$6,905.00) were legal and valid.

X.

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

XI.

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was not in excess of \$6,905.00, and that the plaintiffs had tendered this amount, and that the County of Clallam and the treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1914, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

XII.

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1914 against the lands of the plaintiffs, in the sum of \$14,095.67 were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XIII.

Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$6,905.00, tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XIV.

Because the court erred under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy as provided in the decree by at least the sum of \$892.79.

XV.

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XVI.

Because the court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XVII.

Because the court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the complaint.

XVIII.

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint were assessed by Clallam County for the year 1914 taxes in the sum of \$14,095.00, whereas the just and fair assessment of such lands did not exceed the sum of \$6,905.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiffs' and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

ARGUMENT.

The suits were properly brought and rightly entertained in this Court.

The diversity of citizenship of the parties and requisite jurisdictional amount involved are plead and admitted.

I.

The suits were brought to prevent the enforcement of taxes on plaintiffs' lands, on the grounds that the same were intentionally and fraudulently overvalued by the assessing officers for purposes of taxation, as compared with other properties within the county.

The proceedings before the Board of Equalization were *quasi* judicial and the determination reached by it is properly reviewable in a direct proceeding in equity.

King County vs. Northern Pacific R. R. Co.,
196 Fed. 323 (C. C. A., Ninth Circuit).

Washington Water Power Co. vs. Kootenai Co., 210 Fed. 867, 869 (C. C. A., Ninth Circuit).

Western Union Telegraph Co. vs. Gottlieb, 190 U. S. 412, 426, 427.

Cummings vs. National Bank, 101 U. S. 153.

Balfour vs. City of Portland, 28 Fed. 738.

The case of *Singer Sewing Machine Co. vs. Benedict*, 229 U. S. 481, might appear against our conten-

tion; but there, the action was brought to recover the whole of a void assessment, that part which it was claimed to be void being clearly separable from the tax upon the property returned by the corporation. The distinction between such a case and the one at bar is stated in *Stanley vs. Supervisors of Albany*, 121 U. S. 535, and reiterated in *Western Union Tel. Co. vs. Gottlieb*, *supra*, in these words:

“It is only where the assessment is wholly void, or void with respect to separable portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action will lie for the taxes paid or for a portion thereof. Overvaluation of property is not a ground of action at law for excess of taxes paid beyond what should have been levied upon a just valuation.” (Page 549).

In some states it is expressly provided by statute, that the remedy for intentional and arbitrary discrimination in taxation should be found in a suit at law. There is no statute of the State of Washington which undertakes to impair the remedy which exists in equity in such cases as the suit at bar. Nor do we understand that a state statute could impair the remedy which exists on the equity side of the Federal Court. Ever since the decision in *Payne vs. Hook*, 7 Wall. 425, it has been well understood that equity jurisdiction and remedies conferred by the Constitution and statutes of the United States cannot be limited or

restrained by the State Legislature and are uniform throughout the different states of the Union.

To the same effect are:

Taylor vs. L. & N. R. Co., 88 Fed. 350, 358 to 359 (C. C. A. 6th Circuit).

Smyth vs. Ames, 169 U. S. 466 to 516.

Not only is there no statute in Washington which undertakes to impair the remedy in equity, but in the state courts in Washington it is held that an action lies in equity to enjoin the collection of a tax if it be shown that there is intentional and arbitrary discrimination against a particular class of property.

Spokane & Eastern Trust Co. vs. Spokane Co.,
70 Wash. 48.

Savage vs. Pierce County, 68 Wash. 623.

The Washington statutes expressly recognize this remedy by way of injunction.

Sec. 955: "Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin the sale of property for taxes or to enjoin the collection of any taxes, or for the recovery of any property sold for taxes. unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officers entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be sold or recovered."

Sec. 956: "In all actions to enjoin the sale of any property for taxes, in all actions to enjoin

the collection of any taxes, and in all actions for the recovery of any property sold for taxes, the complainant must state and set forth specifically in his complaint the tax that is justly due with penalties, interest and costs, the taxes alleged to be illegal and point out the illegality thereof; that the taxes for that and for previous years have been paid; and when the action is for the recovery of lands or other property sold for taxes, against a person or corporation in possession thereof, that all taxes, penalties, interest and costs paid by the purchaser at the tax sale, his assignees or creditors, have been fully paid, or tendered and payment refused."

Remington & Ballinger's Codes and Statutes,
Secs. 955-956.

But while the state courts cannot define the equity jurisdiction of the Federal courts, it is nevertheless declared that where the state courts have held that a suit in equity could be maintained in the courts of the state, the same suit can be maintained in the Federal court having jurisdiction in other respects.

Singer Sewing Machine Co. vs. Benedict, 229
U. S. 481.

In *Smyth vs. Ames*, 159 U. S. 466, it is said:

"One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established rules and principles of equity permit such a suit in that court. And he cannot be deprived of that right by reason of his being allowed to sue at law in the state court on the same cause of action. It is true that the enlargement of equitable rights arising from the statutes of the state may be administered by the Circuit Courts of the United States."

The same rule is recognized in:

Case of Broderick's will, 21 Wall. 503,
Cummings vs. Nat. Bank, 101 U. S. 153.

II.

Where it appears that the collection of the tax will cast a cloud upon the title of plaintiff to lands, or involve a multiplicity of suits, there exists the right to bring suit in equity to restrain the collection of the tax.

Gregg vs. Sanford (C. A. C.), 65 Fed., 151, 156, 157.

California & Oregon Land Co. vs. Gowen, (C. C.), 48 Fed. 771.

Taylor vs. L. & N. R. C., 88 Fed., 350, 358.

Raymond vs. Chicago Traction Co., 207 U. S., 20.

Cummings vs. National Bank, 101 U. S., 153, 157.

Benn vs. Chehalis Co., 11 Wash., 134, 136.

In *King Co. vs. Northern Pacific Railway Co.*, (C. C. A.), 196 Fed., 323, 325, it is said by Circuit Judge Gilbert:

"We find no error in the ruling of the trial court that the case was of equitable cognizance.

"It is not alleged here that there are any special grounds of equitable jurisdiction except the fact that the enforcement of the assessment would throw a cloud upon the title of the appellee's property. In *Ogden City vs. Armstrong*, 168 U. S. 224, 18 Sup. Ct. 98, 42 L. Ed. 444, the doctrine was reaffirmed that a court of equity will interfere to enjoin an illegal tax which will

create a cloud upon title to real property. Nor is the case one in which there is an adequate remedy at law. The contention that the appellee may pay the tax and thereafter recover it in an action at law does not suggest an adequate remedy, nor, indeed, any remedy at all as to a portion of the tax, for a portion of it goes to the state, and no action may be brought against the state to recover same.

Raymond vs. Chicago Traction Co., 207 U. S. 20."

In *Gregg vs. Sanford* (C. C. A.), 65 Fed., 151, 156-157, it is said by Circuit Judge Acheson:

"Preventive relief by injunction against an illegal tax which would cast a cloud upon the title to real estate is within the settled powers of a court of equity; and where a tax on its face appears to be valid, and evidence *aliunde* is necessary to show its invalidity, equity will interfere. *Cooley, Tax'n.*, 542, 543; *High Inj.*, §§524, 526. The books are replete with cases in which equity has interposed to prevent or cancel a cloud upon title to land arising from illegal tax assessments or sales thereunder, or from tax deeds, where the proceeding sought to be enjoined or set aside was *prima facie* valid, and it was necessary to prove extrinsic facts to show its illegality. * * *

"In all the decisions of the Supreme Court relating to the general subject of the appropriate relief against the collection of taxes illegally imposed, it is laid down as a proposition not to be doubted that, where the illegal tax is upon real estate, and would throw a cloud upon the plaintiff's title, the case comes under a recognized head of equity jurisdiction." (Citing *Dowds vs. City of Chicago*, 11 Wall. 108, 110, and other cases).

In *Raymond, Treasurer of Cook County, Illinois*,

vs. Chicago Union Traction Company, 207 U. S. 20, 39-40, relief against excessive assessments, resulting in illegal discrimination, was granted in a court of equity, on the ground that a multiplicity of suits would be thereby avoided. It appeared that it was the duty of the collector, having received the money on his warrant, to pay the sum so received in the proportions designated in his tax books to the city treasurer of the City of Chicago, the county treasurer of the County of Cook, the treasurer of the Sanitary District, and other officers and authorities entitled to receive the same, and that if the plaintiff instituted suit to recover back the taxes so paid to the town or county collector he would be obliged to bring separate suits against each one of the taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and that the proportion of the tax which would go to the State of Illinois could not be collected back by any proceeding whatsoever, and that if repayment could be compelled from the City of Chicago and other taxing bodies, such repayment would not cover the cost, including commissions deducted for the collection of the tax, and in that way it was averred that the plaintiff would be subject to great and irreparable injury, for which there was not a complete or adequate remedy at law.

The like showing is made in the suits at bar.

(See paragraph XXVIII-B of the amended bill in case 2905, Record p. 23).

The authorities also maintain that systematic, repeated and continuing violation of the Constitution or the law, to the injury of the plaintiff, like a continuing trespass, presents ample reason for an injunction against its continuance.

Wells, Fargo & Co. vs. Johnson (C. C. A.), 214 Fed., 180, 189.

Atchison, Topeka & S. F. Ry. vs. Sullivan, 173 Fed. (C. C. A.) 456, 471.

Raymond vs. Chicago Traction Co., 207 U. S., 20, 36.

III.

In Clallam County it is the uniform practice of the assessing officers to assess timber lands, especially those in the interior of the county, at a higher percentage of their true value than other property within the county. This is intentionally done. It violates the uniformity of taxation, which it is the purpose of the Constitution of Washington to secure, and is fraudulent and will be enjoined.

Andrews vs. King County, 1 Wash. St., 46.

Spokane & Eastern Trust Co. vs. Spokane County, 70 Wash. 48.

Savage vs. Pierce County, 68 Wash., 623.

Northern Pacific Ry. Co. vs. Pierce County, 77 Wash., 315.

Taylor vs. Louisville & Nashville R. C. Co. (C. C. A.), 88 Fed. 350.

- Washington Water Power Co. vs. Kootenai County*, (C. C. A. 9th Circuit), 210 Fed. 867.
- First National Bank of Walla Walla vs. Hungate*, 62 Fed. 548, 550.
- Cummings vs. Bank*, 101 U. S. 153.
- Chicago B. & Q. R. R. vs. Board of Commissioners*, (C. C. A.), 67 Fed. 411.
- Railroad & Telephone Companies vs. Board of Equalization*, (C. C.), 85 Fed. 302.
- Lively vs. Railway Co.*, (C. C.), 120 S. W. 852; 102 Tex. 545, 558.
- C. B. & Q. Co. vs. Commissioners of Atchison County*, 54 Kan. 781.
- Bank vs. Lyon County*, 83 Kans. 376.
- Semple vs. Langlade County*, 75 Wis. 354.
- Bureau County vs. Chicago, &c. R. R. Co.*, 44 Ill. 229.
- Dundee Mortgage Trust Investment Company vs. Parrish*, (C. C., before Judge Deady), 24 Fed., 197.
- Merrill vs. Humphrey*, 24 Mich., 170.

The defendants apparently claim that plaintiff's lands are not assessed at a higher rate than other interior timber lands, and that it is a matter of no moment that discriminations are made against plaintiff in favor of all property owners in Clallam County other than the owners of interior timber land. This appears from paragraph VI. of defendants' first affirmative defense, where it is said:

"The lands of the plaintiff, as admitted by the allegations of its bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiff, and upon which the taxes

and assessments have been paid by the owners thereof."

This claim of opposing counsel we respectfully submit finds no support in either reason or authority.

Andrews vs. King County, 1 Wash. St., 46, 52.

Spokane & Eastern Trust Company vs. Spokane County, 70 Wash., 48, 49, 52.

Taylor vs. Louisville & N. R. Co., (C. C. A.), 88 Fed., 350, 364.

The Constitution of Washington provides:

"§1. All property in the state not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law."

"§2. The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Remington & Ballinger's Annotated Codes and Statutes of Washington, Vol. 1, Art. 7, §§ 1 and 2.

Spokane & Eastern Truit Company vs. Spokane County, 70 Wash. 48, was an appeal from a judgment of the Superior Court of Spokane County sustaining demurrers to the complaint and dismissing an action to enjoin the collection of a tax. In the opinion of the court, by Justice Gose (pp. 49 and 52), it is said that the demurrers were rested and sustained upon the

ground that the complaint did not state facts sufficient to constitute a cause of action. The appellant contended that the assessment complained of was arbitrary, fraudulent and violative of the above quoted section 2, article 7, of the Constitution. With reference to this it is said:

“As was said in *State ex rel. Wolfe vs. Parmenter*, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707: ‘It is just as imperative that taxation shall be *uniform and equal upon all property* as it is that all property shall be taxed.’ There is neither uniformity nor equality where all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and arbitrary discrimination against a particular class of property. Such an arbitrary policy is vicious in principle, violative of the constitution, and operates as a constructive fraud upon the rights of the property holder discriminated against. In such cases equity will grant relief.”

In *Taylor vs. Louisville & N. R. Co.* (C. C. A.), 88 Fed. 350, 364, in an opinion by Circuit Judge Taft, it is said:

“The sole and manifest purpose of the constitution was to secure uniformity and equality of burden upon all the property in the state. As a means of doing so (conceding that defendant’s construction is the correct one), it provided that the assessment should be according to its true

value. It emphasized the object of the section by expressly providing that no species of property should be taxed higher than any other species. We have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property, are taxed at a higher rate than the owners of other species of property. This does not come about by legislative discrimination, but by the intentional and systematic disregard of the law by those charged with the duty of assessing all other species of property than that owned by complainant and its fellows of the same class. This is a flagrant violation of the clause of the constitution forbidding discrimination in taxation between different species of property."

The contention of defendants that plaintiff has no grievance because no discrimination is practiced against it which is not also practiced against other owners of interior timber lands, is a total misconception of the constitutional rights of the property owner as fixed by the decisions of the courts. It is precisely because this is not a sporadic or accidental case of discrimination against a single taxpayer, but that the rule of appraisement adopted by the assessing officers of Clallam County operates unequally on a large class of property owners within the county, that a court of equity intervenes to restrain the collection of the excessive tax.

Stanley vs. Supervisors, 121 U. S. 550.

Taylor vs. Louisville & N. R. Co (C. C. A.),
88 Fed. 350, 373-374.

Cummings vs. Bank, 101 U. S., 153.

Railroad & Telephone Companies vs. Board of

Equalizers (C. C.), 85 Fed. 302, 307.
C. B. & Q. Co. vs. Commissioners of Atchison County, 54 Kans., 781, 790-791.

This principle is clearly stated in *Stanley vs. Supervisors*, 121 U. S. 550, where it is said by Mr. Justice Field:

“When the over-valuation of property has arisen from the adoption of a rule of appraisal which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due. This was the course pursued and approved in *Cummings vs. National Bank*, 101 U. S. 153.”

Nor is it necessary, as a condition precedent to relief, that the plaintiff show an intent upon the part of the assessing officers to injure the plaintiff and the class of taxpayers to which it belongs.

Taylor vs. Louisville & Nashville R. R. Co. (C. C. A.), 88 Fed. 350, 372.
Atchison, &c., R. R. Co. vs. Sullivan (C. C. A.), 173 Fed. 456, 461.

The principle which controls in this discussion is stated by Circuit Judge Sanborn in the case last cited, in these words, (173 Fed., 461):

“It was, and had been for many years, the rule and the settled policy and practice of these local taxing officers to violate the law and assess the taxable property in that county within their

jurisdiction at about one-third of its actual value. The assessor actually intended to assess the property he listed upon that basis. He testified, however, and the truth of this statement must be conceded, that he did not have any actual intent or purpose to impose an undue burden upon the complainant or upon railroad property. His acts, nevertheless, were in violation of the statute, their natural and inevitable effect was to diminish the burden of taxation upon the property within his jurisdiction and to increase it upon the railroad property, and, however innocent in actual intent he may have been, his acts were as injurious to the owners of railroad property as if he had actually intended to discriminate against them, and the law conclusively presumes that he intended the natural and inevitable effect of his deeds. It was not necessary to the complainant's cause of action that the assessor or the county commissioners should have had any actual intention to increase unduly the complainant's share of the burden of taxation. It was sufficient to sustain its cause that they intended to disregard the law, and that the natural and inevitable effect of that violation was the increase of its share of the burden."

IV.

And in such case as that mentioned in the preceding division III, the assessment of timber lands at a higher percentage of their true value than other property casts an unequal burden upon the timber lands, and the owners thereof are denied the guaranties of the Constitution, and the collection of the excess taxes may be enjoined at their suit, although their property is assessed at less than its actual value.

State ex rel Oregon Railroad & Navigation Co. vs. Clausen, 63 Wash. 535, 542, 543, 544.

Savage vs. Pierce County, 68 id. 623

Spokane & Eastern Trust Co. vs. Spokane County, id. 48.

Spokane & Inland E. R. Co. vs. Spokane County, 82 Wash. 24.

Spokane & Inland E. R. Co. vs. Whitman County, 82 Wash. 696.

Taylor vs. Louisville & Nashville Railroad Co. (C. C. A. 6th Circuit), 88 Fed. 350.

Cummings vs. Bank, 101 U. S. 153.

Raymond vs. Chicago Traction Co., 207 U. S., 20, 36.

Atchison &c. Ry. Co. vs. Sullivan, (C. C. A.), 173 Fed. 456, 461.

Railroad & Telephone Companies vs. Board of Equalizers, (C. C.), 85 Fed., 302, 315.

Bank vs. Lyon County, 83 Kans., 376.

Board of Supervisors of Bureau County vs. Chicago, B. & Q. R. Co., 44 Ill., 229.

Randell vs. City of Bridgeport, 63 Conn., 321.

Andrews vs. King County, 1 Wash. St., 46, 51.

Judge Dunbar said:

“If A is the owner of property of the value of one thousand dollars, which is assessed at one thousand dollars, and B is the owner of property worth one thousand dollars, which is assessed at five hundred dollars, the practical result to A is the same as though B’s property had been assessed at its value of one thousand dollars, and his property at an overvaluation, or at two thousand dollars. In either case the resulting injury is the same; he has been subjected to double the burden that B has, while actually possessing the same amount of property. The just principle of taxation is equally violated in both cases; and the constitutional mandate that ‘all taxes shall be equal

and uniform, and that the assessment shall be according to the value of the property' is equally ignored. And when such an abuse of official discretion affects a large class of individuals, it will be subject to the law's revision."

In *Spokane & Inland E. R. Co. vs. Spokane County*, 82 Wash. 24, it is held that the assessment of railroad property at 42.16 per cent of its valuation, while other property in the same county is assessed at 32 per cent of its value, so manifestly violates the constitutional requirement that taxation shall be uniform and equal upon all property, and shows such arbitrary discrimination against a particular class of property, as to operate as a constructive fraud, and afford grounds for the granting of equitable relief.

To the like effect is *Spokane & Eastern Trust Co. vs. Spokane County*, 70 Wash. 48, which is referred to in the preceding division of this brief.

V.

The assessments complained of are discriminatory and fraudulent. Collection, as threatened, of taxes on this fictitious basis would constitute a violation of the rights secured to plaintiff, not merely under the Constitution of Washington, but by the Fourteenth Amendment to the Constitution of the United States.

(a) The collection, as threatened, of taxes on this fictitious basis would deprive plaintiff of its property without due process of law.

Chicago Union Traction Co. vs. State Board of Equalization, (C. C.), 114 Fed., 557, 565, 566.

Raymond vs. Chicago Union Traction Co., 207 U. S., 20, 36.

Chicago Union Traction Co. vs. State Board of Equalization, *supra*.

This is a decision by Circuit Judge Grosscup, who says:

“Taxes are enforced contributions, levied by the state, upon the property of individuals, by virtue of its sovereignty, for the support of government, and for the public needs. The money thus taken, until taken, is, as much as real estate or chattels, property within the meaning of the Constitution of the United States; and the taking of such money is a taking of property, as much so, for instance, as the taking of private land for some public work authorized by some law of the State or of Congress.

“Due process of law, as applied to the cases under consideration, is the authorized procedure whereby the property of the individual can be taken by the state; it includes the initial authority to levy taxes; the purpose to which money thus raised is to be devoted; and the instrumentalities that distribute the burden upon the citizens. Ours is a government of laws, and not of individual officers, or of boards, or of men.

“Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for a tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes, in the laying and distributing of which there is a substantial departure from law, is the depriving of a citizen of his property without due process of law. * * *

"The sum of all this, as applied to the cases under consideration, is that the reassessments complained of do not embody the real judgment of the board, in either the assessment or the equalization of the capital stock of complainants for the year 1900; and that in the absence of such real judgment, the threatened collection of taxes on the basis of the fictitious entry would be to deprive complainants of their property without due process of law."

(b) And it would constitute a denial to plaintiff of the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Raymond vs. Chicago Traction Co., 207 U. S., 20, 36.

Railroad & Telephone Companies vs. Board of Equalizers, (C. C.), 85 Fed., 302.

Lively vs. M. K. & T. R. R. Co., 102 Tex., 454.

Louisville & Nashville R. R. Co. vs. Bosworth, (D. C.), 209 Fed., 380, 452-453.

Central R. R. Co. of New Jersey vs. Jersey City, (D. C.), 199 Fed., 237.

County of Santa Clara vs. Southern Pacific R. R. Co., 18 Fed., 385, 398-399.

In *Raymond vs. Chicago Traction Co.*, 207 U. S., 20, 36, the Supreme Court of the United States, in an opinion by Mr. Justice Peckham, approved the following language taken from *Louisville Trust Co. vs. Stone*, (C. C. A.), 107 Fed., 305:

"It may be conceded that, if the allegations of the bill are made out, there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional, and illegal un-

dervaluation of other property by taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

VI.

As preliminary to a review of the facts in this case and our endeavor to fit them to the principles of law above announced, we cite the Court's attention to the provisions of the statute of the State of Washington as bearing upon the method and practice of assessing and taxing property.

The following citations are from Remington & Ballinger's Code:

Sec. 9091. PROPERTY SUBJECT TO TAXATION.

"All real and personal property now existing or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for the support of the state government, and for county, school, municipal or such other purposes as shall be designated by law, upon equalized valuations thereof fixed with reference thereto on the first day of March, at 12 meridian, in each and every year in which the same shall be listed, except such property as shall be expressly exempted therefrom by the provisions of law."

Sec 9092. REALTY DEFINED.

“Real property for the purpose of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging, or in anywise appertaining, and all quarries and fossils in and under the same which the law defines or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for purposes of taxation.”

In the case of *France vs. Deep River Logging Co.*, 79 Wash. 339, the Supreme Court of the State of Washington held that standing timber upon land in the same title of ownership, was a part of the land and was taxable with the land as real property.

In the present case there was no severance of the ownership of the standing timber from the ownership of the lands, but both the land and timber were taxed in the name of the same owner and this ownership was conceded in the pleadings and throughout the trial, and the lands and timber were, as a matter of fact, assessed together as real property.

Sec. 9101. REALTY LISTED BIENNIALY.
PERSONALTY ANNUALLY.

“The real property in this state subject to taxation shall be listed and assessed under the provisions of this chapter in the year 1900 and biennially thereafter, on every even numbered year, with reference to its value on the first day of

March preceding the assessment. All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the first day of March preceding the assessment. * * *

“Provided further, that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessed list, and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the County Board of Equalization in the preceding year.”

Sec. 9102. WHEN ASSESSOR TO BEGIN WORK.

“The assessor shall begin the preliminary work for each assessment not later than the first day of February of each year in all counties from the first to the sixteenth class, inclusive; and not later than the first day of March in all other counties in the state. He shall also complete the duties of listing and placing valuations on all property by May thirty-first of each even numbered year, and in the following manner, to-wit: He shall actually determine, as nearly as practicable, the true and fair value of each tract, or lot of real property listed for taxation and shall enter the value thereof, including the value of all improvements and structures thereon, opposite each description of property. He shall make an alphabetical list of the names of all persons in his county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property, and the assessor shall thereupon determine the value of the property included in such statement and enter the same in assessment books opposite

the name of the party assessed; and in making such entry in his assessment list he shall give the name and postoffice address of the party listing the property, and if the party reside in a city the assessor shall give the street and number or other brief description of his residence or place of business."

Sec. 9112. ASSESSMENT AT TRUE VALUE.

"All property shall be assessed at its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made. The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. In assessing any tract or lot of real property, the value of the land exclusive of improvements shall be determined; also, the value of all improvements and structures thereon, and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing on cultivated lands. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. * * *

Sec. 9113. REALTY, HOW LISTED.

"The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known, and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot; * * *

"And provided further that the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed 'Total value of each tract, lot or block of land assessed with improvements as returned by the assessor, * * *'"

Sec. 9121.

Personal property is listed and assessed in the county where the owner or agent resides.

Sec. 9134. BANK STOCK, WHERE LISTED, VALUATION THEREOF.

"All the shares of stock in banks, whether of issue or not, existing by authority of the United States or of the state, and located within the state, shall be assessed to the owners thereof in the cities or towns where such banks are located,

and not elsewhere, in the assessment of all state, county and municipal taxes imposed and levied in such place, whether such owner is a resident of said city or town or not; and all such shares shall be assessed at their full and fair value in money on the first day of March in each year, first deducting therefrom the proportionate part of the assessed value of the real estate belonging to the bank. And the persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of March in each year shall be taken and deemed to be the owners thereof for the purposes of this section."

Sec. 9200. COUNTY BOARD OF EQUALIZATION. DUTIES.

"The county commissioners, the county assessor and the county treasurer or a majority of them, shall form a board for the equalization of the assessment of the property of the county. They shall meet in open session for this purpose annually on the first Monday in August at the office of the county assessor, who shall act as clerk of said board, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and

fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, being a non-resident of the county in which his property is assessed, reduce the valuation of each class of personal property enumerated in section 9128 aforesaid, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individuals, who, in their opinion, have been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

The county assessor shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be pub-

lished the same as other proceedings of county commissioners, and shall make a true record of the changes of the descriptions and assessed values ordered by the county board of equalization. Having corrected the real and personal assessment rolls in accordance with the changes made by the said county board of equalization, he shall make duplicate abstracts of such corrected values, one copy of which shall be retained in his office, and one copy forwarded to the state auditor on or before the first Monday in September next following the meeting of the county board of equalization.

The county board of equalization may continue in session and adjourn from time to time during three weeks, and shall remain in session not less than three days, commencing on the first Monday in August: Provided, that no taxes except special taxes shall be extended upon the tax-rolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue.

The county assessor shall make a record of all errors in descriptions, double assessments, or manifest errors in assessment appearing on the assessment-list at the time of the extension of the rolls, and after duly verifying the same, file said record with the county board of equalization on the third Monday in November next succeeding the annual meeting of the county board of equalization. The county board of equalization shall reconvene on such day for the sole purpose of considering such errors in description, double assessments, or manifest errors appearing on the assessment-list at the time of the extension of the rolls, and shall proceed to correct the same, but said board shall have no authority to change the assessed valuation of any person, or to reduce the aggregate amount of the assessed valuation of the taxable property of the county, except only in so far as the same may be affected by the correc-

tions ordered based on the record submitted by the county assessor.”

Sec. 9212. TAXES, HOW LEVIED.

“The county taxes shall be levied or voted in specific amounts and the rates per centum shall be determined from the amount of property as equalized by the county board of equalization each year, except such general taxes as may be definitely fixed by law.

“The county taxes shall be levied by the county commissioners between the first and second Mondays of October of each year. * * *”

Sec. 9213. TIME AND RATE OF LEVY.

“For the purpose of raising a revenue for the state, county indebtedness, county current expense, school, road and other purposes, the board shall, at said October session, levy a tax on all taxable property in the county, as shown by the assessment roll, sufficient for such purposes. * * *”

Sec. 9219.

“The county treasurer shall be the receiver and collector of all taxes extended upon the tax books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. * * *”

All taxes are made payable on or before the 31st day of May in each year, after which date they become delinquent and bear interest at the rate of 15 per cent per annum from date of delinquency. Provided, however, that if one-half of the taxes are paid on or

before the 31st day of May, then the time for payment of the balance is extended to the 30th day of November following.

Secs. 9230 and 9235.

All taxes are made a lien upon the real property upon which they are imposed or assessed, dating from the first day of March in the year in which they are levied.

Section 9252 makes it the duty of the county treasurer twelve months after taxes charged against real property are delinquent, to make out and issue certificates of delinquency against such property on which taxes have not been paid, to purchasers thereof on payment of taxes and interest, and enacts that

“A guaranty of the county or municipality to which the tax is due that if for any irregularity of the taxing officers this certificate be void, then such county or municipality will repay the holder the sum paid thereon with interest at the rate of six per cent per annum from the date of its issuance: Provided that nothing herein contained shall prevent the running of interest during the said period of twelve months from the date of delinquency, at the rate of interest provided by law on delinquent taxes.”

Section 9254 provides for the foreclosure of the lien of this certificate of delinquency after the expiration of three years from the original date of delinquency.

From the foregoing it will be apparent that under the system of taxation prevailing in this state, the taxes are assessed upon all taxable property according to its value as of March first—say of 1912; the roll is equalized by the Board of Equalization in October, 1912, and the taxes become payable upon real property not until May 31, 1913.

With respect to real property taxes, by reason of the biennial assessment in the even numbered years the taxes upon real property for the year 1913 are based upon the assessment of 1912; thus the valuation of property for 1913 taxes is referred to its value as of March first, 1912, there being no new assessment, and it is payable May 31, 1914.

The taxes for the year 1914 being in an even numbered year are upon assessment based upon the value as of March 1, 1914, as equalized in October, 1914, and is payable on or before May 31, 1915.

In the cases at bar, that of *Clallam Lumber Company vs. Clallam County and Babcock, its treasurer*, being No. 2905, and that of *Ruddock and McCarthy vs. Clallam County and Babcock, its treasurer*, No. 2906, deal with the taxes of 1913, which were assessed as of March 1, 1912, and equalized in October, 1912; and the cases of *Clallam Lumber Company vs. Clallam*

County and Wood, treasurer, No. 2907, and of *Rud-dock and McCarthy vs. Clallam County and Wood, treasurer*, No. 2908, deal with the taxes of the year 1914, which were based upon the assessment and values as of March 1, 1914, equalized in October, 1914. The bills in these cases being based upon alleged fraud and conspiracy of the defendants in their official capacities, both actual and constructive fraud, require a review of the entire case *de novo*, to ascertain whether the lower court did not err in not finding the allegations of the bill clearly supported by the evidence as a whole and granting the relief prayed for. The assignments of error are therefore necessarily broad. We will take them up not in numerical order as outlined in the record on appeal, but in the order of their importance and perhaps more logical sequence.

The errors assigned in all four cases, as we have before stated, are the same, save that the gross amount of taxes and unjust and unlawful excess in the several cases differ in amount only because the acreage and run of timber varies in the four cases, but the principle is alike in all and the ground of error is the same and will be differentiated by us later.

We will take the liberty, therefore, of citing the Assignments of Error as taken from the case of *Clallam Lumber Company vs. Clallam County and Babcock, treasurer*, No. 2905, indicating hereafter any

differences. We refer, in the first place, to the following Assignments of Error:

No. VI. "Because the court erred in decreeing that taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to-wit, in the sum of \$50,049.59, or in any sum in excess of \$30,000, were legal and valid."

No. VIII. "The court erred in decreeing the Bill of the plaintiff dismissed and judgment against the plaintiff for costs."

No. IX. "Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in its Bill, was not in excess of \$30,000 and that the plaintiff had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment of taxes upon the property described in the Bill of Complaint levied for the year 1913, and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes."

No. X. "Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of \$50,049.59, were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the Assessor and Board of Equalization of Clallam County."

No. XI. "Because the court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiff to pay said amount with the credit of \$30,000 tendered by

the plaintiff and to cancel from said lands the balance of said taxes."

No. XVI. "Because the evidence showed that the plaintiff's lands set out in the Bill of Complaint were assessed by Clallam County for the year 1913 taxes in the sum of \$50,049.69, whereas a just and fair assessment for such lands did not exceed the sum of \$30,000 and this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiff and other timber lands in favor of other classes of property in said Clallam County, and that said fraudulent conspiracy had been carried on and participated in by said officers for a number of years prior to the time of such assessment."

VII.

We will first take up the practice of the assessor in dividing these timber lands into zones for the purposes of assessment and valuation.

This Court will be aided in this investigation by reference to the Plaintiff's Exhibit A, a map of plaintiff's lands, showing the zone assessment. For convenient reference by the Court we have had this map photographed and reproduced in diminished size and attached to this brief at its end, to which we beg to refer. It would also assist the Court to have before it a large map of the whole of Clallam County introduced by the defendants, being Defendants' Exhibit 25.

Referring to the zone map, Exhibit A (attached), the lands marked in black are the lands of the Clallam

Lumber Company, involved in Cause No. 2905 as to the taxes for 1913, and in Cause No. 2907 for the taxes for 1914. The shaded lands are the lands of Ruddock and McCarthy, being those involved in Cause No. 2906 as affected by the taxes of 1913 and in Cause No. 2908 as affected by the taxes of 1914, whereas upon the original zone map A the lands of the Clallam Lumber Company are in red, those of Ruddock and McCarthy in yellow.

The heavy dark lines on the map (attached) represent the boundaries of the zones. The numerals in smaller type (for instance just above the most northerly zone the figures 80-40) represent the assessment of timber lands in this particular zone under the 1912 (1913) roll, the 80 meaning 80 cents per thousand feet of fir, spruce and cedar, and the 40 meaning 40 cents per thousand feet for hemlock; and the numerals in larger type, 90 and 40, indicate the assessment under the 1914 roll, being 90 cents per thousand feet for fir, spruce and cedar, and 40 cents per thousand feet for hemlock.

Following now the Record in Cause No. 2905: In paragraph VI of the bill (Record p. 6) it is alleged that the timber lands of Clallam County have been assessed by division into certain zones or districts, which the assessing officers have arbitrarily and unreasonably and unlawfully laid off. Referring to De-

fendants' Amended Answer, paragraph VI (Record p. 593). The use of this zone system is admitted, but it is denied that they are arbitrarily, unreasonably or unlawfully laid off.

In paragraph VII of the bill (Record p. 6) is described the most northerly of these zones (being marked I on the plat, Exhibit A), substantially as follows:

This zone abuts immediately upon the Straits of Fuca and extends east and west along the straits for a distance of approximately 65 miles and extends from the straits into the interior a distance varying approximately from 3 to 8 miles. Within this zone are included those timber lands which of all timber lands within the county are of the greatest value, not merely because the timber thereon is of excellent quality, but particularly because of the location thereof, the same being situated upon tide water or adjacent thereto and thus rendered immediately accessible to the markets of the world. In this zone the timber is assessed for the year 1913 (this being the same as the 1912 assessment) as follows: Fir, spruce and cedar at 80 cents per thousand feet; hemlock at 40 cents per thousand feet.

The defendants in their amended answer (Record p. 60, par. VII) admit the geographical location of this zone I, but deny its area as alleged by the plaintiff,

and admit the figures at which the lands were assessed as charged.

None of the plaintiffs own any timber in this zone.

The Bill, page 7, paragraph VIII, described the zone marked 2 on the plat as situated in the western part of Clallam County, no part thereof lying nearer to the straits than approximately 4 to 6 miles, and no lands within this zone owned by the plaintiff lying nearer to the straits than approximately 9 miles and the great body of the plaintiff's lands in this zone lying a much greater distance therefrom. This zone is irregular in form and extends southerly until it reaches the line of Jefferson County, a distance of approximately 30 miles from the Straits of Fuca. There are no harbors upon the Pacific Coast within the counties of Clallam or Jefferson at or through which the timber on the plaintiff's lands in this zone could be brought to market.

The lands in this zone were assessed for the year 1913 at the rate of 70 cents per thousand feet upon fir, spruce and cedar and 35 cents per thousand feet upon hemlock. In this zone the plaintiff owns 18,707.84 acres of land, the timber upon which amounts to 1,420,241½ M. feet of all sorts, upon which was placed by the assessor for the year 1913 a valuation of \$814,922.50.

It is further alleged that all the plaintiff's lands in this zone are separated from the Straits of Fuca by a range of mountains. These lands were assessed for the year 1914 at 80 cents per thousand feet for fir, spruce and cedar, and 40 cents per thousand for hemlock, the aggregate sum of the assessment being for this year \$941,455 (Record, Case 2907, p. 8).

The defendants in their amended answer, page 60, paragraph VII, admit the geographical location of this zone, but deny that no part of it lies nearer to the straits than 4 to 6 miles or that none of the plaintiff's lands within this zone lie nearer to the straits than approximately 9 miles, or that the great body of the lands of the plaintiff lie more distant therefrom. They admit the form and extent of the zone as alleged; they deny that there are no harbors upon the Pacific Ocean within the counties of Clallam or Jefferson at or through which the timber on the lands of the plaintiff might or could be brought to market; deny that the plaintiff's lands in this zone are separated from the Straits of Fuca by a range of mountains. They admit, however, the acreage, the run of timber claimed by plaintiff in this zone and the rate of assessment as alleged. (See also Record 2907, p. 52.)

Zone No. 3 is described in paragraph IX of the Bill (being the zone farthest east on Exhibit A). This includes Lake Crescent and certain lands con-

tiguous thereto and about a township of lands lying west of Lake Crescent. Plaintiff owns in this zone 3,207 acres and the timber thereon, according to the county cruise, aggregates 136,856 $\frac{3}{4}$ M. feet of all sorts. This timber is valued for assessment for 1913 on fir, spruce and cedar at 70 cents per M. feet, on hemlock at 30 cents per M.; total valuation, \$88,730. None of the plaintiff's lands in this zone lie nearer to the straits than 6 miles and it is charged that between these lands and the straits there is a high and practically impassable mountain range, occupying the northern portion of Township 30 North, Range 10 West, which has never been surveyed. For the year 1914 these lands were assessed for fir, spruce and cedar at 80 cents per thousand feet, and for hemlock at 30 cents per thousand; aggregate assessed value, \$96,565.

The defendants in paragraph IX of their answer (Record p. 61) admit the allegation as to the location and extent of Zone No. 3; admit the acreage claimed by the plaintiff and aggregate assessed valuation and rate of assessment as alleged, but deny that none of the lands within this zone lie nearer to the straits than 6 miles, and deny the existence between these lands and the straits of a high and practically impassable mountain range.

Zone No. 4 (being the south central zone) is

described in the Bill, paragraph X, as lying in the south central part of the county, the north line thereof being approximately 8 to 15 miles from the straits and the zone extending upon the south to the line of Jefferson County, some 27 miles distant from the straits. None of the plaintiff's lands in this zone lie nearer to the straits than 8 miles and some of its lands are 21 miles distant from the straits, the plaintiff's lands extending to the edge of the unsurveyed lands in the main Olympic Mountains. Plaintiff owns in this zone some 18,580.36 acres, the timber on which amounts to 1,110,302 $\frac{1}{4}$ M. feet. These lands were valued for assessment for 1913 at \$588,350.00, the timber being assessed at the rate of 60 cents per thousand feet for fir, spruce and cedar, and 30 cents per thousand for hemlock. For the year 1914 these lands were assessed at \$654,700, the fir, spruce and cedar being assessed at 70 cents per thousand feet, and hemlock at 30 cents per thousand feet.

The defendants admit the location and extent of this zone as alleged by the bill; admit the area of plaintiff's lands, the gross amount of taxation and valuation of the timber for assessment as alleged (Cause No. 2905, p. 62; Cause No. 2907, p. 53).

Another zone described in paragraph XI of the Bill (Record p. 9, being Zone No. 5 on the plat, Exhibit A) is described as situated north of the Solduc

Valley and on the westerly slope of the aforementioned range of mountains which separates this valley and all of plaintiff's lands from the straits. It is alleged that this zone is composed in great part of rough and mountainous lands containing a considerable quantity of burnt timber. Plaintiff has in this zone $798\frac{1}{2}$ acres, upon which the timber aggregates $64,738\frac{1}{2}$ M. feet. For 1913 plaintiff's lands in this zone were assessed at 40 cents per thousand feet for fir, spruce and cedar, and 20 cents per thousand feet for hemlock, aggregating the value of \$21,745. (Record 2905, p. 10). For 1914 these lands were assessed at 50 cents per thousand feet for fir, spruce and cedar, and 25 cents for hemlock, aggregating an assessment value of \$29,945 (Record 2907, p. 10). It is charged that none of the plaintiff's lands in this zone lie nearer to the straits than 8 miles.

The defendants answering this (Record 2905 p. 62) admit the geographical location of the zone; deny that a range of mountains separates the Solduc Valley and plaintiff's lands from the straits; deny that this zone is composed of rough and mountainous lands and that there is comparatively a considerable quantity of burnt timber within the same. Deny that none of the plaintiff's lands in this zone lie nearer to the straits than 8 miles, but admit the area of the lands, rate of assessment of the timber and aggregate assessed

value thereof as alleged. (Record 2905, p. 62; Record 2907, p. 54).

Another zone (No. 6 on the plat) is described by plaintiff as lying along the line of Jefferson County practically midway between the easterly and westerly ends of Clallam County and extending from the south line of Jefferson County north until it touches the north line of Township 29. This contains but a small acreage of privately owned lands bordering on the unsurveyed government lands in the Forest Reserve. Plaintiff's lands in this zone lie approximately 9 miles from the straits. It is alleged that for the year 1913 the timber in this zone was assessed for fir, spruce and cedar at 40 cents per thousand feet, and hemlock at 20 cents per thousand feet, aggregating 4,052 M. feet upon the 80 acres of the plaintiff (Record 2905, p. 10).

The defendants (Record 2905, p. 63) deny that none of the plaintiff's lands in this zone lie nearer to the straits than 9 miles, but admit all the other allegations of paragraph XII except that the zone was arbitrarily, unreasonably or unlawfully set off.

All of the lands of Ruddock and McCarthy involved in Causes Nos. 2906 and 2908 lie wholly within Zone No. 2 as shown on the plat (Exhibit A). The area of these lands was said to be 7,941.6 acres, the run of timber 1,230,041½ M. feet and the aggregate

assessed value for taxation \$479,990. The rate of valuation of the timber per thousand feet was the same for both 1913 and 1914 as in the cases of the Clallam Lumber Company, and in fact all other lands in this Zone 2, namely 70 cents for fir, spruce and cedar in 1913 and 80 cents for 1914, and for hemlock 35 cents for 1913 and 40 cents for 1914. Cause 2906, page 6. Admitted by defendants' answer (Record 2906, p. 44).

In apology for the bulk of the Record of Evidence in this case we respectfully state to the Court that owing to the fact that actual fraud was an issue in this case and the proof of it lay largely in statements and interviews of parties who were called as witnesses, it has seemed necessary to put their testimony in, not in narrative form wholly but largely in their own words, that the Court may measure the weight of it in its various shades and meanings. On other branches of the case this same course was further made necessary by reason of the large amount of descriptive material, geographical and commercial locations and relations of properties, which could not otherwise be made intelligible to the Court. As it is, the Record was cut down more than two-thirds of its original bulk.

All of the original exhibits have been sent up to this Court under order of the District Court. This

became necessary because a large part of them were in the shape of maps, books and photographs which could not be conveniently reproduced or copied. These exhibits are all referred to in the index to the Record of Cause No. 2905, with descriptions to identify them and the page of the Record given where they were introduced.

This suggestion may assist the Court in referring to these exhibits.

The topography and physical characteristics of the area covered by these zones is given in the testimony of T. A. Rixon, an engineer, at pages 101 to 111 of the Record. A reference to Plaintiff's Exhibit A, the zone map (photographic copy attached to brief), and to Defendants' Exhibit 25, being a large map of Clallam County, will aid the Court in understanding this testimony. We also refer to topographical map, plaintiff's Exhibits B and II.

Rixon has lived some eight years in the heart of Clallam County. From 1908 to 1913, substantially, he worked for the Federal government, making topographical maps, estimates of timber and establishing boundaries of reserves in Clallam County. In this connection he had roughly cruised all of Clallam County (page 101). He is now employed by the plaintiffs in

looking after and cruising their lands. He was county engineer of Clallam County for the construction of its highways for eighteen months.

Describing Zone 1, the witness says (page 102): From the east end of the county, back to Twin Rivers, there is a gradually sloping bench, sloping to the straits for the approximate width of three miles. Back from the straits this bench is elevated about 100 feet high on the shore line and at six miles back from the shore about 500 feet high. (Twin Rivers, flowing into the straits, is located just north of the west end of Lake Crescent).

From Twin Rivers west there is a broken country, gradually sloping from the straits with numerous deep ridges and canyons, these ridges and canyons running northeasterly. The elevation in this portion runs up as high as 2,000 feet. South of the line in red, marking the south boundary of Zone 1, the country is mountainous. Referring to Zone — (this is evidently Zone 1), lying immediately south of Zone 1, a portion of it is not very broken. It has a few hills in it but is fairly level ground, but south of it are high mountains going all along. Where the broken line is shown on the map is the termination of the surveys, the land included in the blank spaces being too mountainous to survey. This land extends westerly to an elevation of about 2,000 feet through to the Hoko River (the

Hoko River is seen flowing northerly through the western portion of Zone 2 and Zone 1 into the straits).

There is a low pass at the Hoko and then the elevation climbs up to about 2,000 feet just east of the Hoko and then the elevation runs in a southeasterly direction with the white in blank space on the map (this being in Zone 2). That broken country extends over easterly to Lake Crescent and follows around to the south side of Lake Crescent to Lake Sutherland. This elevation from Lake Crescent to the Hoko runs from about 2,500 to 4,200 feet. It is very abrupt from the south side. The north side, sloping to the north, is more gradual. The summit of this high elevation is about 9 miles back from the straits, lying north of the plaintiffs' lands.

The land to the south of this broken elevation along the Solduc River that comes up through the plaintiffs' timber is a valley varying from a mile to two miles wide, a level plateau, running at an elevation of about 250 feet at the lower end to 750 feet at the upper end in a distance of 20 miles.

(The Solduc River will be observed flowing generally from about west of Lake Crescent westerly through the plaintiffs' lands in Zones 4, 6 and 2, and southwesterly in the latter zone through the Ruddock and McCarthy lands).

To the south of the Solduc River comes the Calawa River. That country is very broken by mountains and ridges. The ridges run north and south, approximately running some 2,500 feet high. There is a high mountainous ridge about 3,000 feet high between the valleys of the Solduc and Calawa Rivers, following the main divide of the Solduc and Calawa Rivers up on the divide of the Hoko, climbing up to a height of some 6,000 feet eventually.

The lands in Zone 4 are considerably rougher than in Zone 2. Where the lands colored in yellow lie, the lands of Ruddock and McCarthy, is a level bench. West of these lands is rolling country. To the west and northwest of the lands of the Clallam Lumber Company it is mountainous, the mountains heading off to the Hoko River. The height of the summit along the Solduc Valley and Lake Crescent is 1,125 feet (Record p. 104).

The witness describes possible railroad routes from this timber to deep water as follows:

One route by way of Dickey River over to the west, following Dickey River up to Dickey Lake and across the divide, and a channel about 250 feet high above the water, following down the Hoko River and out to the straits and out to Clallam Bay. The length of this would be about 50 miles.

Another route would be by way of Beaver Creek. Beaver Creek comes into the Solduc in the southwest corner of Township 30 North, Range 12 West; following the creek northeasterly across Burnt Mountain and then down to the Pysht River (this is the river just north of Zone 5). The highest elevation here would be 1,000 feet; this railroad would be 25 miles long.

Another route would be from the Solduc River to Bear Creek, thence to the divide, then down to Deep Creek, swing around the mountains to Twin Rivers and come out on to the grade at Port Angeles, about half way between the Lyre and Twin Rivers. This would be in the neighborhood of sixty miles and the highest summit to be surmounted would be 1,100 feet.

Another outlet would be to follow down the Coast to Grays Harbor a distance of 75 miles to connect with the nearest railroad. The highest elevation to be encountered by this road would be some 200 feet (Record p. 104).

This witness, asked as to the relative quality and value of the timber lands in the straits zone, No. 1, and the other zones, says (Record p. 107): From the Pysht River over to the west boundary of the zone the timber is large, old growth fir; magnificent, old growth fir that would run 65 to 70 per cent No. 1 logs. The timber stands on good logging ground. He considers the Merrill & Ring timber, lying about the

mouth of the Pysht River, and the Goodyear timber, lying about Clallam Bay, being in Zone No. 1, far superior to the Clallam Lumber Company's tracts (being in other zones), the difference being \$1.25 per thousand stumpage value in favor of the straits timber west of the Pysht River (Record p. 108).

Witness says that the different sections of timber throughout these zones differs a great deal as to the stand and quality of the timber and roughness of the ground, all of which go to determine the facility and cost of cutting into lumber and consequent value (pp. 110, 111).

VIII.

The following witnesses for plaintiff testified as to timber values:

EUGENE FRANCE qualifies as an expert in buying and selling timber and in logging operations on a large scale since 1886 in Washington and Oregon. He investigated some of these lands of the plaintiffs back as far as 1892; had a report from the cruisers showing the character of the lands and was over some of them at that time. As to the value of the interior timber he states as follows:

“Well, it would be very hard to place a buying value upon it, because timber in a general way has been depreciating since 1908, but I would think that if the parties owning this timber could

get an offer of \$1.00 per thousand for the fir, spruce and cedar, it would be an offer that if I had been one holding the timber I would very quickly have embraced."

As to the straits timber, in Zone 1, he says:

"Well that timber that was handiest to the water and to the Straits, it might be possible by logging to get \$2.00 per thousand for it."

He states that hemlock has no value and had no value in 1913 (Record p. 113) and that there was no increase in the market value of timber in the State of Washington in the year 1914 over 1913, and that timber values have fallen ever since 1912 from 35 to 40 per cent by a gradual change (p. 114).

THOMAS BORDEAUX, whose qualifications as an expert the defendants conceded (p. 118), puts the market value of the interior timber on March 1, 1913, fir, spruce and cedar at \$1.00 per thousand; the straits timber of the same kind at \$2.00 per thousand; and hemlock, both exterior and interior, at 50 cents per thousand. The timber is less valuable now than it was in 1912. It depreciated from 1912 to 1913 12 per cent and in 1913 and 1914 from 10 to 15 per cent more by gradual depreciation. He thinks the outlet for this timber is by Grays Harbor and that the interior timber lands lie in very rough ground, in the hills for the most part. In his judgment the tim-

ber on the interior lands was not the same in every section in quality, character or stand; some sections were better than others (p. 119).

JOHN A. REA (p. 121) qualifies in other respects and says that he has been a regent of the University of Washington for five years, which institution has some 50,000 acres of land. He has gained information as to the value of timber lands by examining these; has also bought and sold timber lands in small quantities since 1890 in a dozen counties or more. The university has about 400 acres of timber land in Clallam County near Lake Crescent.

He thinks the straits timber is worth double the interior timber because of the logging conditions, distances and isolation. Hemlock, in his view, had no value at all; was worth perhaps 30 to 40 cents per thousand, and in the interior many buyers would not pay anything for it. He says the timber market has been running off since 1910, and there have been no considerable sales of stumpage timber since 1913. He follows the records, takes the newspapers, and had not seen or heard of any sales (Record p. 122).

He thinks that the interior lands are not worth more than \$1.00 per thousand and would have to be held for ten to twenty years (p. 123).

EARL C. DUVALL (p. 123) has been in the State of Washington since 1881 and a timber cruiser since 1888. He was employed by the Port Blakely Mill Company, the Northern Pacific Railway Company, Mason County Logging Company and others; has bought and sold timber and engaged in logging. He had charge of Clallam County's cruises of its timber lands in the west end of Clallam County in a portion of the years 1911, 1912 and 1913 (p. 124), which were adopted as its official cruise (p. 126), subsequently introduced by defendant as Exhibits 19 and 20.

Witness, referring to Exhibit A (the zone map, original, where the Clallam Lumber Company's lands are colored in red and the Ruddock and McCarthy lands in yellow), says substantially that he had been over all of these lands and was acquainted with the character of the land and timber and logging conditions and general topography of the country. He was present in court and heard the testimony of T. A. Rixon.

Referring to the timber, witness says that the Hoko tract fir and spruce, and the Pysht River fir and spruce are the best quality of timber and a little older growth than the Solduc tract. That after crossing the Twin Rivers to the west, from there on to the Pysht and up to the burn on the Pysht, the timber

is largely old growth fir (straits timber), is probably the oldest growth of timber in the country and would probably give a bigger per cent of clear than the timber farther up (p. 124). The zone line between Zones 1 and 2, he says, seems to follow along the divide on the straits side of the divide. Adjoining sections of this timber land vary materially in quality. He knows of no township where the quality of the timber runs uniformly through the entire township. Sections vary in quality and quantity. In the opinion of the witness, the value of the timber lands marked in red (plaintiff's lands) on March 1, 1913, would be \$1.00 per thousand feet. He thinks there would be no change in value between March 1, 1913, and March 1, 1914:

“It is purely a speculative proposition away from transportation. I do not think there has been much change in the last year in value. Logs are about the same price, a little hard to sell.”

The above price of \$1.00 per thousand refers to fir, cedar and spruce. Hemlock would not exceed 50 cents per thousand; he never knew of hemlock ties having any commercial value; they would only be of value to a person constructing a logging road. He would consider fir, spruce and cedar along the lands about the Pysht and Hoko Rivers to be worth about \$2.00 per thousand and hemlock about 75 cents per thousand (straits timber). He bases this difference in value between the interior and exterior timber on the

facility of transportation and nearness to market, and the Hoko timber is better in quality.

M. H. GRAHAM testified. His qualifications as an expert timber man and operator in all departments were admitted by the defendants (p. 126). He thought that hemlock in March, 1912, was perhaps worth 40 cents per thousand, but timber buyers were not paying anything for hemlock; it had no value except perhaps in rare instances where a railroad passes through it and where there is an opportunity to mill it on the ground and load it on the car, but where it had to be logged, put into the water and towed, it had no value (p. 127).

There has been no change in the market value of timber lands in Washington in 1912, 1913 and 1914. The tendency has been downward ever since 1910, a gradual depreciation. The depreciation of timber from March, 1912, to March, 1914, was about 15 per cent, and since March, 1914, there has been a depreciation of 10 per cent. Fir, spruce and cedar on the interior lands on March 1, 1913, in the judgment of the witness, had a market value of about \$1.00 per thousand.

The following witnesses testified for the defendants on the values of timber lands, qualifying generally and also as having gone down into and through the timber and having afterwards examined the county cruise books in the office of defendants' counsel, going over

some fifty to sixty thousand acres without making any memoranda or notation thereof:

ALEXANDER POLSON (p. 305) qualifies as an expert timber dealer and operator of many years. States that he has examined the cruises of Clallam County showing the plaintiffs' timber, also the timber in the straits zone, No. 1, including the timber of the Puget Sound Mills & Timber Company (the Mike Earles property), of Merrill & Ring logging at the mouth of the Pysht River and the Goodyear timber logging on Clallam Bay (straits zone). He obtained his information about these lands from an examination of the county cruise books in the office of defendants' counsel (pp. 305 to 308). Witness is asked by defendants' counsel:

“Having examined these cruises, what in your opinion was the market value of the timber in the interior of Clallam County as shown upon this map marked green and known as the Lacey holdings on the 1st of March, 1912?”

This was objected to by plaintiffs as incompetent and it developed on cross-examination that the witness had no independent knowledge of the lands other than that gained in looking at the cruises in the office of the defendants' counsel, making no memoranda thereof, examining some 60,000 acres of lands in a casual way, and being unable to locate the land or to

tell how the timber was graded except by reference to the books of the county cruises.

The objection was overruled by the court and an exception reserved (p. 308).

We submit that this was an erroneous ruling and that while the testimony of this witness on this subject was corroborative only of others it should be eliminated in measuring the weight of testimony.

Witness says that these interior timber lands of plaintiffs were in his judgment worth, fir, spruce and cedar, on March 1, 1912, \$2.00 per thousand, and the straits timber the same—and both the straits and interior timber worth the same in March, 1914, as in March, 1912. The Merrill & Ring Company owns one-half the stock in witness' company, the Polson Logging Company (309). There are no driving streams in the interior that run to the straits—the streams in the interior where plaintiffs' lands lie run to the Pacific Ocean in a southwesterly direction (310).

The shifting and evasive responses of witness (311), coupled with his interest with the Merrill & Ring Company—the straits owners—show the bias and animus of this witness as leagued with the defendants (310-312). He admits he estimates that a railroad must be built into this timber from Port Angeles, that his valuation of the timber is based on this means

of transportation, but displays unconcern, worse than ignorance, of the route, costs, practicability of construction of such road. Witness admits there has been no market on Puget Sound that would justify opening up such a tract as plaintiffs' lands during recent years (314-315). Witness would attach no more value to the Mike Earles' timber by reason of its being presently on the Milwaukee railroad operating into Port Angeles than to the interior lands without a railroad (319).

CHARLES McGUIRE (p. 339) says plaintiffs' timber in the interior on March 12, 1912, was worth \$2.00 per thousand, the straits timber about the same. Valuation in 1914 would be about the same as in 1912 for both the straits and the interior timber, viz, \$2.00 per thousand.

Witness has never himself made any sales of timber lands in the interior of Clallam County and does not know of any such sales being made; considers the hemlock of little value in either the interior or the straits timber (p. 348).

On cross-examination witness says all of the straits timber is about of the same value as the Mike Earles' timber (which latter is on the Milwaukee railroad and being operated into Port Angeles); doesn't think the presence of a railroad adds anything to the value of Mike Earles' timber (350), and the fact of timber be-

ing in the interior without a railroad or on the straits with a railroad does not affect its value because large holdings would justify building a railroad (350).

Witness thinks the log market remained the same from March, 1913, to March, 1914 (p. 354). He considers that this timber would have to be taken out by way of a railroad to Port Angeles.

Witness thinks a tract of 160 acres of land would be of very much less value proportionately than a large tract; practically impossible to value it (p. 354).

C. I. WANAMAKER (p. 356) values the interior timber on March 1, 1912, at from \$1.75 to \$2.00 per thousand, and about the same on March 1, 1914; and the timber in the straits zone about the same (p. 356). Hemlock was of no value either in 1912 or 1914 (p. 359).

The following inquiry is made of the witness:

“Q. Suppose that the lands of the plaintiffs here in the interior were taken from where they are now lying and put alongside of the lands on the straits here, what would you say as to the relative value of the timber in the two tracts?

A. They would be no more valuable on the straits than where they are.

Q. Why not?

A. The character of the shoreland getting that timber to the harbor. There are only two or three harbors along that coast.

Q. Lets take that comparison before we go into that phase of the case. What I would really

ask you is, what would you say as to the comparative value between the Lacey tract and the straits timber, if they were supposed to be taken out of the interior and placed along the straits timber in the same relative situation.

A. Practically the same value.

Q. And you regard the timber then as of the same character and quality?

A. Practically the same.

Q. How about the grade?

A. I should judge about the same grade.

Q. And you think that they are of the same market value situated down there today and taken in 1912 as they would be out upon the straits?

A. I do."

Witness thinks this timber would be operated by a railroad to be built to the Pysht River, some 18 miles long.

He is further asked (p. 360):

"Q. Do you know of any timber that has ever been sold in the interior of Clallam County for any such price as you put upon it, \$1.75 a thousand?

A. I don't know of any being sold.

Q. Do you know of any that has ever been sold in the interior of Clallam County for more than \$1.00 a thousand, fir, spruce or cedar?

A. I don't know of any sales being made there.

Q. Do I understand that you don't know of any sales ever being made at any price in the interior?

A. Not to my knowledge.

Q. Then your judgment of the values which you have given is not based upon your knowledge of any purchase or sale of any such timber in Clallam County?

A. It is not based on that, no."

R. D. MERRILL (p. 362) describes at length the items which go to make up the value of standing timber from an operative standpoint. He compares the relative location and quality of the straits and interior timber, says that the timber in the interior is worth fully as much or more than the timber on the straits. Taking it as a whole he knows it is worth more; that is, taking all the tracts along the straits as one tract, and all the Lacey tract in the interior (plaintiffs' lands being known as the Lacey tract). He says the fire risk is better than on the straits; that is, the interior country is wetter than the straits; there is more rain. Witness says there is a great difference in the elements which go to make up the value of standing timber in its physical characteristics and between timber in one zone and that in another, and between timber in neighboring zones and different districts (pp. 362, 365, 370, 378, 381).

Witness figures that the plaintiffs' timber would be logged and shipped by railway from the interior to the mouth of the Pysht River, or Clallam Bay; that a railway could be built to the mouth of the Pysht River for \$200,000 (p. 365).

This witness' company, Merrill & Ring, own 700,000,000 feet of timber at the mouth of the Pysht River. He states that it would cost no more to open up the straits timber with a railway than the plaintiffs'

timber in the interior, because of the greater area of the plaintiffs' lands to absorb the cost.

These paradoxes of this witness are accounted for upon cross-examination. The witness is a member of the company of Merrill & Ring, owning a large tract of timber on both sides of the Pysht River at its mouth, where they had started buying as early as 1880 (p. 372).

“Q. Have you been familiar with sales of timber land in the interior for the last ten years?

A. No, I have known of some sales, I have heard of sales, but I do not know that I can give any definite figures as to sales in the interior.

Q. Have you ever known of sales in the interior at a price greater than a dollar a thousand?

A. No, sir, and I have no information of any exterior greater than a dollar a thousand.”

Witness had recently bought a tract of land in a pass between the Lacey holdings and Lake Crescent because he thought it was a good piece to own; he thought that a railroad would go through there sometime and it would be valuable on that account (pp. 372, 373). And for this he paid \$1.00 per thousand feet for the timber.

This indicates pretty well the animus of this witness, the star witness of the defendants, representing the straits zone operating timber men, favored by the taxing officers and aligned against the interior timber

owners, they naturally being desirous to retain the assessment of 80 cents a thousand on their \$2.00 timber as against 70 cents per thousand on the interior \$1.00 timber, favored because they are operating and employing labor.

Witness thinks the ideal way to operate plaintiffs' timber would be to establish one or two saw mills at Lake Pleasant and saw the timber into lumber there. Referring to Exhibit A, Lake Pleasant will be found about the eastern central part of Zone 2.

Witness says that the log market was higher in the spring of 1912 than in the spring of 1914; during that period from 1912 to 1914 there has been no great demand for logs. A great many camps have been shut down. It has been a poor period for logging (p. 381).

Witness says that his estimate of the value of these timber lands is from an operative standpoint, based upon the quantity of land in one holding; that if one had a forty-acre tract situated as these interior lands it would be worth nothing. The same would be true of a thousand acres without a railroad; that his value is predicated upon the aggregation of a sufficient block of land in one ownership to justify a railroad (p. 384). Hemlock, he estimates, has no value where it has to be towed, but hemlock might be utilized if you have a railroad and saw it on the

ground. Where the fir is heavy and thick the hemlock is very defective and not a good tree, but where there is a solid stand of hemlock it grows into beautiful trees (p. 384).

It will cost witness' company some \$200,000 to prepare logging grounds at the mouth of the Pysht River for their logging operations (p. 394).

Witness concludes:

"In this testimony which I have made, I figure that we have sort of worked against ourselves, in a way, because we have always had an eye on the timber on the interior."

N. I. PETERSON testified (p. 396) that he is in the logging business in the extreme east end of Clallam County. Thinks the market value of plaintiffs' timber in Zones 2 and 4 in March, 1912, was about \$2.00 per thousand for fir, spruce and cedar; in 1914 it would be the same. Witness has never seen the Merrill & Ring timber, nor the Mike Earles timber, but has seen a portion of the Goodyear timber (on Clallam Bay). Witness skipped through the county cruises on this timber and would say that the value of the straits timber was about \$2.00 per thousand for 1912 and 1914 (p. 397).

Witness does not know of any sales having occurred within the last five years in any of the interior lands; does not know the price of any timber lands

sold in the west end of the county; thinks hemlock in the west end of the county is worth from 25 to 30 cents a thousand, but made no examination or personal inspection of the amount of hemlock.

J. E. FROST, one of the counsel for defendants, testified (p. 402): For the past three or four years witness has been retired from the practice of law and engaged in the logging business. He states his qualifications as an expert as to logging, lumbering, transportation and taxation, and gives a history of the experience of his company which is logging lands on Cedar Lake, in King County, tending to show that there is an actual market value for hemlock. On page 406 he gives the selling price of hemlock logs. The Court will observe, however, that this is the price of the timber as cut into logs and not the stumpage price.

It is apparent that his experience with the manufacture and sale of hemlock was in a special line and in a specially developed market, and the company was operating under a contract with the City of Seattle, which desired to clear off its watershed on Cedar Lake.

Witness on cross-examination (p. 413) states that he is counsel in the case on a contingent fee, under contract to receive a certain fee at all events and twice this if he is successful for the county in the suits.

WILLIAM J. CHISHOLM (pp. 319 to 330) is general manager of the Merrill & Ring Logging Company. Says that the Lacey holdings in the interior, belonging to the plaintiffs, would log into the waters of the straits as cheaply as timber in Zone 1 (the straits zone) owing to the fact of it being in a big holding and the country being level in the interior zone. This timber in the interior, by reason of its large holdings, would be worth about \$1.50 per thousand, the same as the timber on the straits, in March, 1912, and in March, 1914, about the same. Witness has been with the Merrill & Ring people for thirty-five years, is now on the Pysht River in charge of their operations, where Merrill & Ring have about 25,000 to 30,000 acres. Merrill & Ring own the mouth of the Pysht River on both sides.

Merrill & Ring are now contemplating logging other lands on the straits. They might put in from seventy-five to one hundred million feet a year. Thinks that the Mike Earles mill cuts that much or more (p. 332).

Would not call hemlock of any particular value down there (p. 326). Says that the Merrill & Ring timber, the Mike Earles timber (all in the straits zone) and the timber in the interior are worth all the same, but admits the following:

“* * * The Mike Earles mill is as you

know on the railroad running out here to this plant, and is operating with the railroad as you say something in the neighborhood of a hundred million a year I should judge" (p. 327).

Witness substantially admits that his valuation is based entirely upon an operative basis and not upon the market value of stumpage timber, saying:

"I do not know the exact value. There is no one knows the exact value of a stick of timber until it is cut." (327).

H. B. Newbury, values plaintiffs' timber on March 1, 1912, at from \$1.75 to \$2.00 per thousand, the straits timber the same, and the values would remain the same for both classes of timber in March, 1914, as in 1912. Witness eliminates hemlock from this, saying that it would be of no value whatever except as it might be used in logging operations. (P. 333).

On cross-examination the witness says he never bought or sold any timber lands in Clallam County, has not purchased or sold any lands in any considerable quantity during the last five years; there have been no considerable sales of timber land during that period. The tendency of the market for the last five years is downward from an operating standpoint; from a holding standpoint, it has been at a standstill. (Pp. 333, 334).

Witness figured on the timber being taken out

by a railroad from the interior to the Pysht River or to Clallam Bay. (337).

Witness has no knowledge of any sales of timber in the interior country within the last five years; does not know of any sales of any timber lands having taken place in Clallam County for more than \$1.00 per thousand. He only knows of one sale having occurred some four or five years ago in Clallam County; does not know of any since; knows of nothing that has occurred within the last five years that would raise the value of the timber on the interior lands in Clallam County. (P. 338).

From this review of substantially all of the evidence as to the value of the timber lands given by the experts, those in the straits zone and those in the interior, of the plaintiffs', the following matters are apparent:

First: The plaintiffs' witnesses were the only ones who testified as to the market value of the timber lands, and they placed these at \$2.00 per thousand feet, fir, spruce and cedar, for the lands in zone 1 (the straits zone), and \$1.00 per thousand for the lands in the interior (plaintiffs' lands).

Second: The valuations by the plaintiffs' witnesses were all based upon the speculative value of

what the logs would be worth if a railroad was built into the timber and the timber opened up, estimating it from the standpoint of the profits and losses of an operating business not yet undertaken, and most of defendants' witnesses expressly admitting that they knew of no sales within five years past of timber lands in Clallam County, either on the straits or on the interior, and never heard of any sales at more than \$1.00 per thousand for the lands.

Third: Their valuation from an operative standpoint was based upon the assumption of the building of a railroad from the lands on the interior to the straits to the mouth of the Pysht River, or to Port Angeles.

Fourth: There had been no demand in recent years for timber that would justify the opening up of such a batch as plaintiffs' lands.

To establish the cost of such railway routes the defendants introduced the testimony of the following witnesses:

R. H. THOMPSON (p. 301). In 1891 made an investigation, estimate and report of a proposed route from the mouth of the Pysht River over to the Solduc River, by way of Beaver Creek. This was made at the instance of Merrill & Ring. One route, $16\frac{1}{2}$ miles in length, would cost \$210,000. Another route,

21 miles in length, would cost \$320,000. This, without railroad or logging equipment.

S. A. WALKER (p. 394). An engineer in the employ of Merrill & Ring, estimates the cost of a railway from the Pysht River to the interior timber, 18 miles, at \$191,000, without railroad or logging equipment.

R. W. REMP (p. 400), an engineer for Clallam County, made a survey for a railroad from the Pysht River to the Solduc and cross-roads down below Sapho, a distance of 18 miles (p. 401). This he figures at \$173,000, without logging or railway equipment.

WILLIAM J. CHISHOLM, general manager for Merrill & Ring, gives an estimate of the logging equipment necessary to operate the plaintiffs' lands at an aggregate of \$375,000. (P. 325).

T. A. RIXON, plaintiffs' witness, estimates the cost of a railway from the middle of the plaintiffs' lands down on the Solduc by way of Lake Crescent, to connect with the Milwaukee Railroad out of Port Angeles, as follows (p. 106):

From its western terminus to Lake Creccent, 20 miles (estimated from the map, Exhibit A, at a mile to the section), at \$5,000 per mile, \$100,000; from 2 miles west of the lake to Piedmont, including heavy tunneling, \$25,000 per mile, or \$50,000; from Piedmont

to Port Angeles, 25 miles at \$10,000 per mile, or \$250,000; bridge across the Elwah River, \$40,000, or a total of \$440,000.

A road to the southwest, to Grays Harbor, he estimates at 70 miles at \$15,000 per mile, or \$1,050,000; three large bridges \$60,000, or a total of \$1,110,000.

The route by the Hoko River to Clallam Bay, on the straits, being 30 miles, at \$12,000 per mile, or \$360,000, and 12 miles at \$20,000 per mile, would cost a total of \$600,000.

It will be recalled that all of the testimony of the witnesses for the defendants, as to values of the interior timber lands, was based upon the speculation of building a railroad from these interior timber lands to the mouth of the Pysht River, and one of them, Alexander Polson, thought the timber would go out by way of Grays Harbor.

But the mouth of the Pysht River is not available because owned on both sides by Merrill & Ring (pp. 107, 371) to be operated at its full capacity, and which is now being dredged by them for such capacity, at an expense of \$200,000. (P. 394).

While a common carrier railway might condemn a right-of-way from the uplands over the mountains, on the interior, to the mouth of the Pysht River, it

would be utterly useless for logging purposes without booming grounds, for which there was no power of condemnation, and the ground is already occupied and fully utilized by Merrill & Ring, these being the same people who had purchased the mountain pass down by Lake Crescent, with the evident intention of shutting the plaintiffs' timber in from egress toward Port Angeles. (P. 373).

MEASURE OF VALUE OF TIMBER LANDS FOR TAXATION AND ASSESSMENT ADOPT- ED BY DEFENDANTS AND FOLLOWED BY THE TRIAL COURT WAS ERRONEOUS.

By the state statute, Section 9112, Remington & Ballinger's Code, it is provided as follows:

"All property shall be assessed at its true and fair value in money. In determining the true and fair value of real or personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which said property would sell at auction, or at a forced sale, or in the aggregate with all the other property in the town or district; but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made.

"The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor.

"In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such

*property, including the mine or quarry, would sell at a fair, voluntary sale for cash. * * **

As to what is the speculative value or operative value as contra-distinguished from the market value we cite the following authorities:

Vancouver Waterworks Co. vs. Clarke County,
55 Wash. 115.

Here the court was treating of the valuation of lands taxed, as available for a supply of water for the city. The court said (p. 115):

“Nor is it evidence that they are over-assessed, to compare the amount at which they are valued with the assessment put by the assessor upon lands containing springs, without showing that the springs are in demand for the use like, or similar to that for which appellant’s springs are used; but of this there was no evidence at all. The witness merely said that the springs could be used for furnishing water to Vancouver, not that there was any demand for their use for that purpose, or for any other, that made them of value. * * *”

Spring Valley Waterworks vs. City, 192 Fed.
163.

In estimating the value of lands belonging to the water company in a condemnation suit by the city, testimony showing how many building lots a tract of this land could be divided into, and what such lots could be sold for, separately, was held inadmissible, the court saying:

"In this case we are dealing with values as they existed and conditions as they were during the years 1903, 1904 and 1905. * * * Such testimony is too uncertain and speculative."

The court referred to *Railway Co. vs. Cleary* (Pa.), 17 Atl. 468, quoting:

"The jury are to value the tract of land and that only. They are not to determine how it could best be divided into building lots, nor conjecture how fast they could be sold, nor at what price per lot. The speculator and investor, in deciding what price he could afford to pay, would consider the chances and probabilities of the situation as then actually existing. A jury should do the same thing. They are not to inquire what a speculator might be able to realize out of a resale in the future, but what a present purchaser would be willing to pay for it in the condition it is now in."

Reed vs. Rahm, 4 Pac. 112 (Cal.)

"The value of a tract of land is its true and absolute value. The value is its actual existing value as opposed to its potential or possible value."

Sutherland on Damages, Vol. 4, p. 3143, in measuring damages in condemnation suits therefor, says:

"The owner may have damages for being prevented from removing minerals under a right-of-way. The jury, however, is not at liberty to make special allowance for the value of unopened mines their existence is only material so far as they affect the market price of the property."

N. & W. Ry Co. vs. Davidson (W. Va.), 53 S. R. 727.

Suit in condemnation of lands. Here it was said that the testimony of the witnesses as to the value of the land with underlying coal on the basis of operating the unopened coal seams, was erroneous, the court saying:

“The value must be arrived at by ascertaining the true market value of the land proposed to be taken, taking into consideration all the elements of value as would be done in negotiation for the sale and purchase therefor, between private parties.”

Gardner vs. Brookline, 127 Mass. 358.

Assessment of damages for land taken by the city.

It was held that the fact that the land was cranberry producing land was competent to show its effect upon the market value of the land, but it was not competent to go into the question of the production or cost of production or profit, in the sale of cranberries, being on an operative basis.

Burt vs. Wiglesworth, 117 Mass. 303.

At page 306, Gray, judge, says:

“In estimating that value (namely, the land to be taken) the jury might doubtless take into consideration the uses to which the land might probably be applied. And witnesses acquainted with the market value of the land in its existing condition at that time might testify to the fact of what they thought the value was, and state their reasons for their opinion. * * * But

testimony as to what would be the fair rental value of the land with a suitable and proper building upon it, related to a mere matter of opinion as to the future, not of a present, fact, and was too prospective and indefinite in its nature to be competent evidence of the present value of the land not built upon. * * *"

In re Daly, 45 N. Y. Sup., p 787.

Relating to the value of land in condemnation proceedings:

"But still it is the market value of the property that is the measure of compensation. When, therefore, it is sought to show that a tract of land has a use for a particular purpose, it must also be shown that it is marketable for that purpose or has an intrinsic value. If on the farm there was a quarry or deposit of ore, the owner would not be limited to the value of the land as a farm, but would be entitled to compensation for the quarry or mine, if they increased the value of the land. But though the stone of the quarry was good, or the ore reached, if the location of the land was such, either from lack of transportation facilities or for other reasons, as to render the quarry or deposit of no particular advantage or value, then he would be confined to the value of his land for farming purposes. * * *"

San. Dist. Chicago vs. Loughran, 43 N. Y. 359 (Ill.)

Condemnation proceedings. It was here held that the proven existence of limestone underlying the land might be shown to affect the market value of the land, but the estimate of its value based upon profit in

quarrying the stone was held improper (p. 360), the court citing Am. & Eng. Ency. L., Vol. 6, p. 568:

“* * * Where the land taken contains minerals, the measure is the same that would be given for land with mineral in it, but any inquiry as to the profits or price or value of the minerals, if the minerals themselves had been taken out, would not be permitted.”

In condemnation of a water power, it was held incompetent to permit evidence showing that alteration in the water race would increase the power as being theoretical and speculative—a fanciful attempt to ascertain what would be the extent of the power if certain supposed alterations were made, and if a considerable sum of money were devoted to this improvement.

Cox vs. P. H. & P. R. R. Co., 64 Atl. 731 (Pa. State).

Held incompetent to calculate the number of tons of limestone underlying lands to be taken and multiplying that by the estimated price per ton, as forming an estimate of the value of the land.

City of Atlanta vs. Nelson (Ga.) 82 S. E. 99.
Haslam vs. R. R. Co., 64 Ill. 354.

The existence of a mine under property may be shown as affecting its value, but not the probable operative profit.

J. & S. E. Ry. Co. vs. Walsh, 106 Ill. 255.

Page vs. Wells, 37 Mich., 415. Opinion by Judge Cooley:

"The market value of lands is not to be determined by combining several values of its constituent parts, such as trees, gravel and coal, and its value for agricultural purposes when these are removed. Witnesses as to the value may take account of these things, but in their estimate must give their opinion of the market value of the land as a whole."

Dupeis vs. C. & N. Ry. Co. (Ill.) 27 N. E. 720.

Sedgwick on Damages, Vol. III, p. 2431:

"As damages are measured by the actual market value, the test of whether any particular element of value is to be taken into consideration is dependent upon whether this use, or the expectation or possibility of it, affects the market value under all the circumstances of the case. This has been held in Illinois, in the case of lots valuable for dock purposes, but where there was no immediate demand, that their value when improved for this particular use, profits derivable, or their value at some future time when the wants of the community might make the building of docks profitable, would be merely conjectured and error; but if the location and possible future use for docks enhanced their present market value in their existing condition, this would form an element of damage to be considered by the jury."

As showing the unreliability of defendants' evidence as to the valuation of these interior timber lands, based upon the cost of a railroad to be built, and operations hereafter to be conducted, and as ex-

emphlying the danger of such measure of value, the following is instructive ,if not conclusive:

FRANK T. BURROUGHS, a witness on behalf of the plaintiffs, testified as follows (p. 690): That he is in the traffic department of the Milwaukee Railway as freight agent of this railway company's lines in Washington and in Montana. Witness produced the tariff sheet issued by the Seattle, Port Angeles & Western Railway and approved by the Washington Public Service Commission, showing the rate of freight on logs from Mike Earles' plant near Port Crescent to Port Angeles, a distance of 25.2 miles. The rate for 25 miles is from \$1.45 to \$1.50 per thousand feet of logs. The rate for the short haul of 7 miles is \$1.10 to \$1.15 per thousand. The Milwaukee Railroad, witness thinks, is now within about 6 miles of Port Crescent, running easterly and southerly to Port Angeles. The tariff sheet is introduced as plaintiffs' Exhibit HH.

JOHN H. ROBINSON, a witness for plaintiffs, testified as follows (p. 683): He is a clerk in the office of the division superintendent of the Union Pacific Railway Company, at Seattle, and is acquainted with the tariff upon shipments of logs. He produced and there is introduced in evidence by the plaintiffs as Exhibit GG, the freight tariff of the Northern Pacific Railway Company, approved by the state rail-

way commission. Referring to this he gives the following tariff (p. 686): This is the rate in dollars per thousand feet: 10 miles or less, \$1.00; from 10 miles and not over 15 miles, \$1.25; from 15 miles and not over 20 miles, \$1.35; from 20 miles and not over 25 miles, \$1.40; between 25 miles and 30 miles, \$1.45; between 30 and 35 miles, \$1.50; between 35 and 40 miles, \$1.55; between 40 and 45 miles, \$1.60; between 45 and 50 miles, \$1.65.

Now these were actual figures in practical business life, charged by a railway then existing, a common carrier, under a tariff sheet approved by the state railway commission, acting for the protection of the timber owner and shipper and not imaginary figures compiled by interested witnesses as to what might be done on a railway not yet built, in a country which did not justify it, to haul logs to a market that did not yet exist.

There was testimony introduced by the defendants through their interested witnesses, Mr. Merrill, Mr. Frost, counsel for the defendants, as to other tariffs of a somewhat less rate in other parts of the state, but the foregoing was the only testimony of the operation of the railways anywhere in the neighborhood of this land, and through the official tariff sheets became, as it were, an official declaration.

According to the above official tariffs, it would

cost the plaintiffs to transport their logs from the center of their holdings to the mouth of the Pysht River, 21 miles, not less than \$1.35, and they could not get them into the bay as there were no logging grounds open to them. It would cost them more than \$1.50 to transport them by a railway yet to be built, to Clallam Bay, where they would be equally without a logging outlet. It would cost them certainly this much, and more, to reach Port Angeles, a distance of over 45 miles by way of the Solduc and Lake Crescent, and considerable more to transport them to Grays Harbor, 70 miles, over a railway yet to be built at a cost of \$1,110,000.

None of the witnesses for defendants claim that these interior timber lands are any more valuable than the straits lands, disregarding the remoteness from tide water or their isolation, but consider them of the same intrinsic value and no greater. Both classes of timber, they say, are worth \$2.00 per thousand, and yet it costs \$1.50 per thousand to pick up this interior timber and put it where now stands the timber of the straits zone, on Clallam Bay, Pysht River; or at Mike Earles' camp near Port Crescent.

We contend, therefore, that the testimony of the experts called by the plaintiffs, who testified on timber values, namely, Thomas Bordeaux, Eugene France, M. H. Graham, John Rea and E. C. Duvall, that the

market value of this interior timber land was \$1.00 per thousand, compared with \$2.00 per thousand for the timber on the straits zone, was practically unanswered by the testimony of the defendants' witnesses, as to the speculative value of these two classes of lands, basing their testimony wholly upon the profit or loss of operation, and in most cases admitting that they had no knowledge of any market value of timber lands in Clallam County for the past five years and never heard of a sale of any timber lands in the interior of the county, at over \$1.00 per thousand.

And in weighing the credibility of the witnesses upon this branch of the case we call the court's attention to this fact, that while these witnesses for the defense, Chisholm, Frost, Merrill, Polson, McGuire and Newbury, outnumber the witnesses for the plaintiffs, the plaintiffs' witnesses had no personal interest whatever in the event of the suit, but were totally disinterested, whereas this can hardly be said of at least four of defendants' array, namely: J. F. Frost, of counsel for the defense; Merrill, the representative and champion of the straits zone timber owners; Polson, his partner; Chisholm, his manager. And among the witnesses for the plaintiffs is E. C. Duvall, who estimated and compiled for Clallam County its cruises of these very lands, by which it claims the plaintiffs and all parties are bound. He placed the

market value of the straits timber at \$2 per thousand (p. 125), and of the interior lands at \$1 (p. 128).

JOHN HALLAHAN, assessor, called by the defendants, introduced a map, showing the timber zones and described the references to the various timber holdings in the western part of Clallam County (p. 258), which map is introduced as defendants' Exhibit 18.

The witness states that all the lands included in that part of Clallam County were timber lands excepting at Forks Prairie and Quillayute Prairie. (P. 262).

There are introduced in evidence as defendants' Exhibits 19 and 20, two large volumes, containing timber cruises of the county (p. 263). John Hallahan explains these substantially as follows (pp. 268 to 273):

The timber lands are divided into ten-acre tracts. As designated in a diagram appearing at the top and left hand corner of each page, letter F represents fir, The figures following represent the number of trees on the ten acres. The next is the letter A, which represents the average number of thousands of feet, board measure, contained in each tree. This is shown as to the amount of fir, spruce, cedar, and hemlock on

each ten acres, giving the number of trees and average run per tree (p. 269), and the grades of each forty acres as totaled up (p. 270). H. P. represents hemlock piles or poles, and the number of them is given for each ten acres. H. T. represents Hemlock ties and the number of these is given.

At the right hand top of the map is a topographic sketch made by the cruiser in the field of each forty acres there, a double run.

The figures on each ten acres show the aneroid markings of the elevations. The character of the ground is shown as to being swampy, bushy or not (p. 271), and on each forty totaled up, the total amount of feet of each variety of timber (p. 271). The dead and down timber is also shown. The grading of the logs as to first class, second or merchantable, or No. 3; the character of the surface of the ground as to being rough or smooth (p. 272); the character of the timber, giving quality, old growth, good quality, and whether smooth or sound; also character of the logging conditions of the forty acre tract. The lands that were burned over are also shown. (P. 272).

“Q. Is it true that all the timber lands in Clallam County were cruised with equal care?

A. I believe so, yes, sir.

Q. You have the same report of the same conditions, the information concerning all the timber lands in that county?

A. The same information as to all timber

lands west of range 9 were cruised under the direction and supervision of Mr. Duvall. He had absolute charge of the cruising in the field, and the work, I believe, has been very correct and complete.

Q. The values placed on the timber land in Clallam County for the year 1914 by yourself as assessor were made upon the basis of these cruises, were they?

A. Absolutely."

We direct the attention of this court to these volumes of timber cruises (defendants' exhibit 19 and 20) and ask the court to observe that with such information before him the assessor could have valued every ten-acre tract of the timber lands of Clallam County with exactness.

Now he is asked, on cross-examination, what method he followed in drawing and designating these zones and observe the answer (p. 503):

"Q. What did you figure to be the full market value for the purposes of assessment in this zone up here?

A. Repeat the question.

Q. (Question read).

A. The assessment for 1912 in those lands and in this zone along the straits?

(Objection by defendants; overruled).

A. The question is too ambiguous; I could not answer it that way.

Q. In what way did you not understand it, Mr. Hallahan?

A. You haven't asked me a direct question; you, however, asked me an ambiguous question.

Q. How did you come to draw those lines here by zones? (p. 507).

A. That was a matter of calculation.

Q. How do you calculate it?

A. We calculate from the information at hand.

Q. Give us the calculation; what did you put in the zone on the Straits?

Q. (Mr. Peters): How did you come to draw this line that I am now tracing?

A. That line represents my judgment at the time I put it on there.

Q. Judgment of what?

A. Judgment as to the assessment of timber within that line, to the north of that line.

Q. Then as I understand you, you made a detailed estimate of the values for the purposes of assessment of every forty acres and then——

A. The law requires that——

Q. And you fulfilled the law in that respect?

A. Yes, sir.

Q. And after having done that, you got out a map and drew a line down here in this way, and said that all of the timber lands up along here, included between this line and the Straits, was assessable at 80 cents for fir, cedar and spruce and 40 cents for hemlock, is that a fact?

(Objection by defendants, overruled).

Q. (Question read).

A. For the year 1914?

Q. For 1912, for eighty and forty?

A. Yes, sir.

Q. That is the way you did that?

A. That is the way I done it, yes, sir.

Q. Why didn't you begin this line, say, four or five miles over to the east of where you did, and run it down two miles south of where you did?

MR. EWING: I object to that.

Q. (Mr. Peters): What I want to get at is to have you explain just why you ran the line the way you did; why did you run that line just the way you did?

A. My judgment at that time ruled my way. My judgment was that the timber laying north of that line was worth that amount for assessment purposes.

Q. Your judgment was that all the timber laying north of this line, and south of the Straits—I am now pointing at what you designate zone 1, was worth eighty and forty? (p. 508).

A. Yes, sir.

Q. That is why you drew that line that way?

A. Yes, sir.

Q. And that is the way you assessed the property for 1912?

A. That is the way I assessed the timber, the timber only.

Q. Mr. Hallahan, now, referring to this zone No. 2, why did you draw the lines, the boundaries of this zone No. 2, in the manner in which you did?

A. That is about my judgment. I exercised my best judgment, was one of the reasons.

Q. As to what?

A. I drew the lines there. The main reason was my exercise of judgment.

Q. And you claim all the lands lying in that zone of assessable value on timber of 70 cents in 1912, for fir, cedar and spruce, and 30 cents for hemlock? I presume those are the exact figures; it is your map.

A. I do not know about that map.

Q. If you come here and look at it, or refer to your own map?

A. I expect them figures are correct; I am assuming that your figures are correct.

Q. Yes, sir, assume that.

A. Yes, sir.

Q. Then in the same manner you formed this zone No. 4, did you, which, for 1912, the timber is assessed at 60 and 30?

A. To shorten the matter up, I would say

that I exercised my judgment in establishing all these zones, in making the zones I took in the surface of the country, the kind of timber and other characteristics that entered into the general topography of the country; everything concerning its physical character.

Q. Do you mean to tell us that every forty in this upper zone, for instance, after you figured it out, figured at eighty and forty?

A. Every one was figured at the same rate.

Q. And every forty, that is, within this zone No. 1, figures out at an assessable value of eighty and forty, does it?

A. Eighty and forty, where it is timber land.

Q. Every forty included in the detailed assessment that you figured out?

A. Yes, sir.

Q. And every forty that you figured out in the detailed manner in which you have heretofore related that lies within this zone No. 4, figured out at sixty and thirty cents for 1912?

A. Yes, sir.

Q. This is true of all these zones?

A. That is true of all these zones.

Q. Were the logging conditions exactly the same with respect to every forty?

A. As I said before, according to my best judgment in the premises, this represents my judgment, and my judgment is based on the knowledge I had at the time (p. 510).

Q. Are the logging conditions of this tract which I point to here now the same as the logging conditions in this tract in yellow, down there?

A. I can't tell you off-hand.

Q. Why did you put the same value?

A. I could not tell you that off-hand, either. My judgment is uniform within the zone." (510).

This is the explanation by the assessor who designed this zone system and drew these lines, of the

method and reason for it, which shows in itself no method, and no reason.

It might appear from first reading his testimony, (pp. 504 to 506) that he had actually utilized the elaborate and complete system of cruises which the county had gone to enormous expense to obtain (contained in the volumes Exhibits 19 and 20), but what he actually did, as he here admits, was: with these books before him, he took a straight edged ruler and drew certain arbitrary lines on the map and said that all the timber lands north of this line were worth, say 80 cents a thousand; those between these lines below were worth 70 cents a thousand, etc., and the only explanation he gives of it is that he "used his best judgment."

The fact that he carried the timber lands on his assessment rolls in separate forty-acre tracts and an assessment was put on each one of these tracts might be misleading, without further analysis. He would carry a certain forty-acre tract on his books under a description of lands, from his cruise books, Exhibits 19 and 20; he would obtain the run of timber on this forty, and the character of it as being fir, spruce, cedar or hemlock. Then he would multiply this by the rate of 80 cents per thousand, or 40 cents per thousand, to get the assessable value of the forty; *but the 80 cents a thousand or the 40 cents a thousand he would obtain*

by reference to his zone map, taking the rate of valuation per thousand that he had devised for all lands within this zone.

It is apparent, therefore, that while the amount of timber and its character as to being fir, spruce or cedar on the one hand, or hemlock on the other, may have been taken from the cruise books, Exhibits 19 and 20, the rate of assessment, and therefore the assessed valuation of these lands, being the product of multiplying the quantity of timber by the assessable value per thousand, was taken from this zone map and the zone map was taken from the assessor's head and not from any method of classifying the lands according to the elements which would really make up their value, and which were contained in the cruise books.

A casual inspection of the cruise books, taking any two or three contiguous forty-acre tracts in the same zone, will show how wholly dissimilar they are in elements of value, and therefore in assessable value, and will demonstrate the fact that their assessment by Hallahan, the assessor, was in no sense based upon their actual physical characteristics, or distinctive elements of value, such as being on rough or smooth ground, being near to or distant from logging streams, etc., but yet, if lying in the same zone, geographically, they were valued alike.

The Board of Equalization for the years 1912 and 1913 was composed of J. C. Hansen, Erickson, Frank Lotzgesell, Clifford L. Babcock, as county treasurer, and John Hallahan, the county assessor. In 1914 the board was composed of the same members except that James Clark, of the west end, supplanted Mr. Erickson of the west end (p. 457).

Now take Frank Lotzgesell of the Board of Equalization. Being offered as a witness for the defendants, he was cross-examined by the plaintiffs, in part as follows (p. 534):

“Q. While you were sitting on the Board of Equalization, how did you arrive at the value of timber lands, from which you were to put your assessments for taxation purposes; how did you arrive at that value?

(Objection of defendants overruled).

A. I suppose by using our best judgment; that is my judgment.

Q. Well, to use your judgment you must have had some basis of computation. You say you used your best judgment with reference to those timber lands; now, how did you arrive at the value at which those lands should be assessed?

(Objection of defendants, overruled).

A. I do not think I could give any other answer. I used my judgment, what I thought they were; that is all. * * *

(Page 540):

“Q. Will you explain the method of assessment and equalization by zones, as those zones appear on the map?

A. Can I explain the method of assessment and equalization?

Q. Yes, sir.

A. No, sir, I cannot.

Q. Have you ever been able to explain it?

A. I don't know as I could explain it."

On reading further the testimony of this witness, on page 549, the court will observe that he hides behind the same cloak as Hallahan, the assessor, in failing to answer the inquiry as to the method of zone assessment or otherwise, by saying that he "used his best judgment."

It appears from the cross-examination of Clifford L. Babcock, the treasurer, that while on the Board of Equalization in 1912 and 1914, he knew nothing about the manner of assessment of property or the rate at which it was assessed; made no inquiry about it or examination of property, but the board simply confirmed the roll as prepared by Hallahan, the assessor (pp. 406 to 475).

J. C. Hansen, chairman of the board, admits the same practice and custom on his part and on the part of the board. At page 642, he is asked, on cross-examination, as follows:

"Q. What rate did you understand when you were equalizing the rolls in 1912 that the timber land of the plaintiffs and others were assessed at?

A. I could not tell you, that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce, eighty cents and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion

of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion and I had always gone according to my own opinion. My opinion is that that was assessed at less than one-third at that time."

The Board of Equalization neither raised nor lowered any timber assessments that had been made by the assessor either for 1912 or 1914 (p. 646).

We have then the testimony of four of the five members of the Board of Equalization, being all but one member. Hallahan, the assessor, will give no intelligible explanation of the method or reasons for the zone system. Lotzgesell, Babcock and Hansen in effect say that they knew nothing about it; they accepted the work of Hallahan, the assessor, without question and cannot offer any explanation.

IX.

This classification for taxation by zone system is purely arbitrary and operates unjustly and unequally and the assessment made in accordance with such rules, and taxes levied upon the plaintiffs' lands in pursuance thereof, are void.

This was so held in:

Hersey vs. Board of Supervisors of Barron County, 37 Wis. 75.

This was an appeal from an order denying a motion to dissolve a temporary injunction restraining

the county treasurer from selling lands for delinquent taxes. The case is so pertinent that we quote at length from the opinion therein (pp. 77 to 81):

“The complaint alleges, that certain rules were adopted by the assessors in 1872, for the assessment of real estate in Barron County, and that the same rules were followed by the assessor and board of review in making the assessment for the year 1873, upon which the tax in question was levied. These rules are as follows: First. Pine on first class driving streams assessed at \$2 per M. within the limits of two miles hauling. Second. Pine on such streams of more than two miles hauling, at \$1.50 per M. Third. Pine on second class driving streams, as Moose Ear and other streams mentioned, at \$1.50 per M. within two miles, and \$1.00 per M. beyond. Fourth. Pine on fourth class waters, head of Yellow River, north of Bear Lake, at 50 cents per M. Fifth. Lands entered for farm lands (wild) at from \$2.50 to \$10 per acre, according to locality; and cultivated, at \$6 per acre. Sixth. Cut lands according to inspectors’ reports, at 12½ cents per acre.

“It is alleged, that these rules were framed and adopted by the taxing officers with the intent and for the purpose of favoring the firm of Knapp, Stout & Co., owners of large quantities of pine lands in Barron County, and that they operated oppressively upon the rights of the plaintiff.

“The defendants deny that the rules of assessment adopted in the year 1873 were proposed for the purpose of favoring the firm of Knapp, Stout & Co., or were intended to benefit in any manner that firm; and they aver in the answer, ‘that the said rules were so proposed and adopted in the government of the said assessment of 1873, for the reason, that under them it was practicable, and practicable only under them, to secure an

assessment fair and equitable, based upon the actual value of the taxable property; and that the said rules were so proposed and adopted in the year 1873 to the end that a fair and just assessment might be had in said town, and for no other or different reason or purpose.'

"It sufficiently appears from this averment, as well as from other admissions in the answer, that these rules were made the basis of the assessment for the year 1873; and assuming, as we may well do, that they were adopted with no fraudulent intent, and with no purpose of favoring any owner of real estate, the question then arises, Was the assessment valid which was made in conformity to them? It appears to us that it was not.

"The statute directs the manner in which real estate shall be listed or valued for taxation. 'Real property shall be valued by the assessor from actual view, at the full value which could ordinarily be obtained therefor at private sale, and which the assessor shall believe the owner, if he desires to sell, would accept in full payment. In determining the value, the assessors shall consider, as to each piece, its advantage or disadvantage of location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, or other valuable deposits known to be available therein, and all buildings, fixed machinery and improvements of every description thereon, and their value.' Sec. 16, ch. 130, Laws of 1868. The listing and valuation are the foundation of all the subsequent proceedings; and this provision prescribes the manner in which they shall be made, with the manifest purpose that the tax levied upon each tract shall be relatively according to its real value. The assessor is required to make the valuation from actual view, and he is called upon to exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in

short, he is to consider all the elements which enter into and constitute its value. These are the plain, obvious rules and principles upon which the statute contemplates that the valuation shall be made. By the rules in question, these statutory principles were utterly ignored and disregarded. An arbitrary classification was applied to the real estate. It is conceded that the lands were generally wild, pine lands. The standing pine on what is called first class driving streams was assessed at \$2 per M. within the limits of two miles, regardless of the advantage or disadvantage of its location up or down the stream, and wholly ignoring the element of quality in the standing timber. In respect to pine on such streams, which had to be hauled more than two miles, the same arbitrary value was affixed, regardless of its quality or location from the source or mouth of the stream. The same remarks apply to the other classification in the rules. The real estate is valued solely with reference to the quantity of pine timber standing upon it, without taking into account the quality of the pine, its location up or down the stream, or the character of the soil, or those other elements which determine the value of land, and which the statute says the assessor shall consider and regard in making the valuation. That a valuation thus made would necessarily operate unjustly and unequally, seems to us too plain for discussion. True, it is alleged in the answer that it was only practicable to make a fair and equitable valuation of the real estate under these rules, which is equivalent to saying that the law upon the subject cannot be complied with. But if no valuation can be made as the statute requires, we fail to see upon what ground the tax can be sustained. A valuation is essential to lay the foundation for the tax; and if no legal valuation was practicable, it follows that any tax based upon a wholly unauthorized valuation would be illegal and void. The allegation is a *felo de se*.

"But it is said by the counsel for the defendants, that even if the rules above quoted were absolutely followed and strictly pursued by the assessor in making the valuation, yet, if they were honestly adopted as expressive of the judgment of the assessor, there being no question of fraudulent intent, a court of equity would not say the assessment was void. But how can a court of equity pronounce an assessment valid which is in plain violation of law? Real estate must be valued in the manner and upon the principles prescribed by the statute. The assessor may make a mistake in the valuation while honestly attempting to execute the law. Errors of judgment, inequalities in valuation, will intervene in all proceedings of this character. It might not be practicable for the assessor to go over every foot of ground and thus, from 'actual view' of every part of a tract, determine its true market value, at the time of the assessment. But there should be an attempt to substantially comply with the law. Here we feel warranted in assuming, upon the admissions in the answer, that the law was disregarded, the assessor adopting for the guidance of his judgment rules which not only departed from the statutory requirements, but which could not fail in their operation to defeat a fair and just valuation. That such must have been the necessary effect of the rules upon the valuation, seems to us perfectly obvious. As remarked by counsel for the plaintiffs, the idea that standing pine, just two miles from a stream, should be assessed at \$2 per M., though of a poor quality, while excellent timber on an adjoining tract, a little further from the stream, is assessed at \$1.50 per M., confounds all notions of justice and equality.

"That the assessment made under the rules, and the taxes levied upon the lands of the plaintiffs, were void, and that a court of equity will interfere to restrain the sale, follows from the decisions in *Hamilton vs. The City of Fond du*

Lac, 25 Wis. 490, and *The Milwaukee Iron Co. vs. The Town of Hubbard*, 29 Id. 51. Those cases seem to be directly in point upon that position."

We are aware of the case of *Doty Lumber & Shingle Co. vs. Lewis County*, 111 Pac. Rep. 562, decided by the supreme court of Washington, November 10, 1910, in which in valuing timber lands for the purposes of taxation:

"The commissioners before the meeting of the Board of Equalization tentatively established as basis of value 75 cents per thousand feet on all first classes of timber within four miles of a commercial railroad; 50 cents per thousand feet beyond the four miles and within the limits of ten miles of such railroad, and 25 cents per thousand feet beyond the limit of ten miles, with proper deductions for timber of a lower class.

The appellants had a hearing before the Board of Equalization. In raising the assessment upon the timber lands of the several appellants after the hearing, the tentative basis were not strictly adhered to, but the board took into consideration the distance of the property from a logging stream or commercial railroad and contour of the land as affecting the expense of getting the timber to market. In short, it fixed the values on the basis of quality of the timber, and its accessibility to market. * * *

The Washington court in discussing the above case of *Hersey vs. Board of Supervisors of Barron County*, says:

"In that case the fixed value was put upon standing timber within the limits established, without reference to logging conditions and quality

of the timber or to character of the soil. * * *"
(P. 564 Pac. Red.)

The Washington court now referring to the case then before it, continues:

"The board had before it satisfactory evidence of the value, quality and quantity of the timber upon each piece of land, the character and contour of the land itself, the distance of the timber from logging streams and commercial railroads, and general logging conditions, and from this evidence supplemented by the knowledge of its members, who were under oath to do their duty, it acted as it saw the light; and even if it be conceded that it made mistakes, they were honest mistakes and offered no ground for interfering with its judgment."

Certainly that cannot be said in the case at bar, for while the assessor, Hallahan, had access to the timber cruise books showing all of these features with reference to every forty acres of land, he utterly disregarded them and blocked off the timber lands in arbitrary zones, for reasons which he will not divulge, and the other three of the five members of the Board of Equalization disclaim knowledge of any reason therefor.

X.

Testimony was introduced by the plaintiff showing the actual existence of a conspiracy and fraudulent combination of the taxing officers to discriminate against the plaintiffs' lands and in favor of other classes of

property in Clallam County, and as against these lands and in favor of operating timber lands, from which we give excerpts to aid the court's investigation of the record:

H. Darwin (p. 145), state fish commissioner. He had visited Clallam County as a representative of the Seattle Times for the purpose of writing up its natural resources, in 1912. He was driven over the roads through the timber by Mr. Hansen, county commissioner and others. Hansen told the witness that the timber holdings of Clallam County were divided into six or seven big groups; that the policy of the timber holders had been to shut out the little timber holders, which had been to retard the development of the county, by having their property assessed at very low valuations. Mr. Hansen said that he thought the proper policy would be to tax the timber men so high that they would either give up their holdings or put in mills and saw it up into lumber.

I think the question came up like this: that these holdings had been locked up; that there was no railroad development and that possibly there had been a gentleman's agreement between the railroads that for a certain length of time they would not build into the Olympic Peninsula and that the policy was to save this timber until such time as it would greatly appreciate in value; that is my recollection of how the matter came up; that they locked that up and was letting it stand there.

Q. What was their method?

A. Their method of circumventing that was to force the cutting of timber, or force its sale.

Q. By what means?

A. The only power they had was taxation.
(P. 145).

“* * * They should also increase their

tax rate on that (recruises), and this would enable them to build railroads and highways and develop their county, and also force the cutting of the timber, or sale of the timber to other parties. (P. 146).

Two days after the occurrence. Darwin wrote his article in which he said 'Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market.' " (Pp. 148-149).

Mr. Hansen's attempted explanation of this is found at pages 638-643. In the course of which he demonstrates the fact that as chairman of the Board of Equalization he did not know at what valuation they were assessing the timber.

"Q. Didn't you propose to assess the timber high?

A. No, sir, not high.

Q. At what did you propose to assess it?

A. Equally.

Q. Equally?

A. In 1912—I left it entirely to the assessor." (P. 642).

E. H. GRASTY, a witness for the plaintiffs (p. 209), being in the bond brokerage and mortgage loan business in Portland, Oregon, visited Port Angeles in February of the year 1914, to look into the matter of loans and investments on his own behalf and to ascertain for the plaintiffs the values of real estate in Port Angeles and Clallam County (p. 210). There he had an interview with the following people:

Witness called Assessor Hallahan's attention to

the discrepancy that he found to exist between the actual assessed value of property in Port Angeles. Hallahan told him that if he assessed the property at what he was supposed to assess it, 50 per cent of its real value, he would break every property owner in Port Angeles (pp. 210, 211). Hallahan pointed out to him the Morse property on the corner of Laurel Street and First Street, and said:

“That property is worth \$15,000, but it is assessed for \$800 to \$1,000.”

That, of course, was merely one instance of several that came to witnesses's attention.

“Q. Did he give you any explanation of why it was assessed at \$800 if it was valued at \$15,000?”

A. He simply said that there was an agreement among the local people in assessing the property in Port Angeles for what it was actually worth; that it would break the property owners. In other words, that it would break them and that he could not do it.”

And in fact he said that this had been the practice ever since he, Hallahan, was in office. (P. 212).

On another visit made in May, 1914, Grasty, in company with Mr. King, of Portland, went to Mr. Hallahan at his office, at which time, on inquiry, Hallahan explained to King and Grasty the reason for the difference between the real and assessed value of property, as follows (p. 213):

“ ‘Well,’ he said, ‘we grade property in the county and assess it accordingly. Now,’ he said, ‘we assess timber in the county more than we do anything else.’ And I asked him why he did that, and he said ‘that the reason they assessed the timber higher than they did anything else was because, on account of the great fire protection in this state, that the timber owners were holding their timber there, and that they were assessed these high taxes in order to make them operate; in other words, to build logging roads and to cut their timber.’ ”

Hallahan further told him that this practice had continued right straight through; and his further reason for assessing property lower in Port Angeles was because of a certain amount of the funds, taxes that were taken by the county and the state for their share, contributing their share for the running expenses of the state and county, and the reason they kept their local taxes down was for the purpose of depriving the state and county of taking away from Port Angeles any more money than they could possibly help. (P. 213).

The witness asked Hallahan for a letter setting forth these matters, which he refused to give. (See Hallahan’s explanation of this, p. 486).

Witness also talked with Mr. Hansen, the county commissioner, who said to him (p. 215):

“Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local peo-

ple we keep these assessments down. We had made it a rule to keep the assessments down, the taxes of Port Angeles property. We have a lot of timber standing in this county, owned by eastern interests, and it is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles."

Upon Grasty's request, Hansen gave him a letter to this effect, which was introduced in evidence as plaintiffs' Exhibit L (p. 215), which letter reads as follows:

"Port Angeles, Wash., May 8, 1914.

"Mr. E. H. Grasty,

"Portland, Oregon.

"Dear Sir:

"Replying to your inquiry, why is there such a difference in actual valuations and assessed valuation on Clallam County property, you particularly refer to lots 15, 16, 17, 18, block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from \$9,000.00 to \$9,500.00. They are assessed on an average of \$700.00. I have been for the past three years, and am now, a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place, Port Angeles has always been a very quiet, side-tracked city, and it has always had, and has now, a population that has always had confidence in its future; that its location and large timber resources must some day make a city of considerable size; for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the assessor has always borne in mind that he could only assess such property ac-

cording to what it ought to pay, without damaging the owner of non-income property. During my time in office we have gone over the tax roll every year and always have upheld the assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor—there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find that he has made raises for this year only in such places where he was compelled to do so on account of its selling value.

“The above statement also holds good for lots in block 20, Townsite of Port Angeles, lots in that block are worth from \$3,000.00 to \$3,500.00, and assessed at about \$300.00. I can take you all over this city and show you the same conditions exists in any part of the city, and so long as the assessment is equal we are satisfied; so far we have always had enough revenue to pay running expenses. The only time this city run behind was in the early days before there was very much property to tax.

“Hoping that the above information is as complete as you require, and if not, that you will call on me for further information, I am,

Yours very truly,

“J. C. HANSEN,
“President Board of Equalization.”

Hansen, going upon the stand thereafter (p. 526), admitted that he wrote the letter; that he wrote it at his own dictation and out of the presence of Grasty.

Grasty had an interview with Mr. Babcock, the treasurer, in April, 1914, at Port Angeles. Babcock told him substantially the same things as Hansen and

Hallahan had regarding the low assessment of property in Port Angeles.

(P. 217). Babcock took Mr. King and Mr. Grasty for a drive and in answer to their complimenting the condition of the roads, Babcock informed him that the roads were built out of the timber lands in the western part of the county. (P. 218). And on the subject of taxation, he gave Grasty a letter, dated April 29, 1914, filed as plaintiffs' Exhibit M, which is found at page 771 of the Record, and reads as follows:

"Port Angeles, Wash., April 29, 1914.

"Mr. E. H. Grasty,

"Portland, Ore.

"Dear Sir:

"In regard to the valuation placed upon the assessment rolls by the county assessor for taxation purposes of Clallam County for the City of Port Angeles.

"The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to anywhere near the true value of property at the present time, their taxes would increase in like manner and the assessor has been influenced by their attitude.

"As a matter of fact, nearly all the lots in Port Angeles are now upon the rolls at from 10 to 20 per cent of their true value and consequently the tax levy is very high—nearly to the limit in every taxing district.

"Out-of-town investors are appalled at our high levy but if the valuations were raised to somewhere near their true value and the levy reduced in accordance, I think—am sure—our taxes would not look so high and would compare very

favorably with other towns of like population of Port Angeles.

“Very respectfully,
(Signed) “C. L. BABCOCK,
“Treasurer of Clallam County.”

Babcock, afterwards called by the defendants, admits the writing of the letter and endeavors to explain it, but simply said he lied to help out the Elks Lodge in an attempt to get a loan from Mr. Grasty. (See p. 449, and cross-examination, beginning pp. 456, to 470).

Grasty, on one of these visits, interviewed also Mr. Levy, a citizen of Port Angeles, who stated to him in substance about the same in regard to the low assessments, as Babcock and Hansen (pp. 222, 223), and gave him a letter to this effect (plaintiffs' Exhibit N), which is set out in the printed record at p. 772.

Levy, called by the defendants, admits the writing of this letter (p. 592).

“Q. (By defendants' counsel): Now, you say you gave him a letter pursuant to his request; what suggestion did he make as to the contents of the letter that he wanted you to give him?

A. He didn't make any suggestion as to the contents. I made it up out of my own head.

Q. Didn't he indicate what the letter should contain?

A. He wanted some explanation. He did not seem to care what kind of an explanation I gave him. So I had to give him something.

Q. I hand you plaintiffs ExhibitN; I will ask you to look it over and see whether or not that is the letter which you gave him?

A. That is the letter—that looks like the letter that I wrote.”

The witness was deputy county assessor of Clallam County in 1910 (p. 592).

Grasty had an interview with Thomas T. Aldwell, a citizen and real estate man of long standing in Port Angeles, who said to him, in part:

“Mr. Grasty, I am not surprised at that, because the people who underwrote the improvement bonds that we have just voted and advertised here for regrading this city, were amazed at the very low taxable value of the property, and what we claim as its actual value. * * *”

Aldwell further said to him (p. 224):

“Mr. Grasty, we are united here in an effort to hold down our taxes. * * * There is a great deal of timber in this county that is not being operated. The people are holding it,” and he said, “Just confidentially, we are making the timber interest bear the burden of the expense of taxation here, and that is the reason for this condition.”
* * *

Mr. Aldwell wrote him letters along the same line as the preceding, which had been brought out in the testimony of Aldwell himself (p. 155), introduced in evidence as plaintiffs' Exhibits E and F, which are found in the record at page 775, being dated April 29, 1914.

Grasty had a talk with Mr. Lutz, a banking man of Port Angeles, who told him substantially the same as Mr. Levy about the low assessment. (p. 225).

Grasty had a talk with Mr. Christensen (p. 226), in which Christensen stated substantially the same as Levy and Lutz about the low taxation, and this further (p. 228):

(Mr. Grasty): "On this same afternoon I told Mr. Christensen that my previous investigation had shown an awful discrepancy in the real and actual value of property at Port Angeles, and the low taxes that were being assessed against the property owners, and he said 'Yes, Mr. Grasty, the assessed value of property in Port Angeles is really very low, but there is a condition existing here, Mr. Grasty, that is very shameful, and that is, the officials here are assessing the timber owners enormous taxes for the purpose of making them operate. * * *'"

Mr. Christensen gave Grasty a letter upon that subject, which is introduced as plaintiffs' Exhibit "P" and is found at page 773 of the record, from which letter we quote in part, the following:

"It has been the custom in past years that the assessor of the county assessed property at a nominal value, or about 30 per cent of the actual value of the property; accordingly, I would estimate that present market values approximately would be six times the present assessed valuation of real estate for taxation purposes. This, of course, is meant in a general way and may not apply to each separate case." (P. 774).

Christensen was not called by the defendants to refute this. He was cashier of the Citizens National Bank for the past ten years. (P. 794).

Grasty had an interview with Mr. C. C. Henry, a citizen of many years' residence at Port Angeles (p. 231). In answer to the witnesses' inquiry as to the discrepancy between actual and assessed values in Port Angeles, Mr. Henry said:

"Mr. Grasty, the officials here have entered into an agreement among themselves to tax the timber interests higher than anybody else in the county."

"He said they had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber and thereby bring profit to the people of Port Angeles." (P. 231).

C. C. Henry, thereafter put upon the witness stand by the defendants, admitted, upon inquiry of plaintiffs' counsel, a list of property he had given to Grasty showing his (Henry's) valuation of the property and its assessed value, which was put in evidence by the plaintiffs as Exhibit CC (p. 607), a copy of this exhibit being found at page 779 of the record. From this it appears that his town lots, valued at \$800, were assessed for \$180. Those valued at \$600 were assessed at \$170, and others in a similar proportion, and his timber lands valued at \$1,080, were assessed at \$740,

and those valued at \$640 assessed at \$425, thus corroborating the statements made by Grasty.

Grasty details the meeting with the committee of the Elks Club at which were present Mr. Hansen and Mr. Babcock (p. 232), on which occasion Grasty asked what was the actual value of the lots under discussion:

“Mr. Hansen spoke up and said that the property was assessed for 20 per cent of its value, and Mr. Babcock contradicted him, saying, ‘No, it is nothing of the kind.’ He said, ‘The property has always been assessed for 10 per cent or less of its actual value.’ Mr. Hansen did not dispute that, nor did anybody else in the room, but everybody acquiesced in that statement by their silence.”

Mr. King, a witness produced on behalf of the plaintiffs, lived in Portland, Oregon; was the son of E. A. King, who was a client of Mr. Grasty's. Witness is assistant manager of the Portland branch of the American Surety Company. He had accompanied Mr. Grasty to Port Angeles on the visit made in May, at the instance of Mr. Grasty, who said that there might be some investments there that would interest witness' father. Grasty also told him that he might desire him to corroborate a report which he, Grasty, would make of the assessed and appraised value of property down there. Grasty did not tell him what the information was wanted for, nor did he know that any lawsuit was involved.

King's testimony runs from pp. 249 to 255 and corroborates substantially Grasty's interviews with Hallahan, which Mr. King details as follows (p. 251):

"Mr. Hallahan was in his office when we called shortly before noon, and we were talking about the method of assessing the property. Mr. Hallahan said to us that the property was graded for the purposes of assessment. He said that 'the timber was assessed higher than any other class of property, and for the purpose of making them operate.' He said, 'If it wasn't necessary for them to pay high taxes they would be content to leave the timber standing in Clallam County and cut elsewhere. They would leave the timber in Clallam County until the last, because of its fire protection, the excessive rainfall in the timber belt diminishing the probability of loss from fire.'"

"Q. What effect, if at all, did he say this was going to have upon their operating and high taxes?"

A. He said that they could not afford to pay the high taxes without operating; that that was the purpose of forcing them to operate."

XI.

After the filing of the suits herein, Causes Nos. 2905 and 2906, in May, 1914, by plaintiffs, attacking the taxes for 1913, the assessed values of timber lands were raised by the assessor, Hallahan, and the assessment concurred in by the Board of Equalization, while the timber lands were worth less, rather than more. Let us see what explanation the taxing officials make of this change.

While there is a variance in the testimony of

the five or more witnesses for plaintiffs, and the seven or more witnesses for the defendants on the relative value of exterior and interior timber, there is absolutely no variance, but the testimony of each and every one of these witnesses was expressly to the point, that there had been a gradual depreciation in the value of timber in Western Washington from 1910 to the time that they were on the witness stand in 1915, and that this was a gradual decline, some of them putting it from 12 to 15 per cent from 1912 to 1914, and not one of the twelve or more witnesses but said expressly that timber lands were worth no more on March 1, 1914, than on March 1, 1912. (See references in brief on first point discussed, pp. 101-120.)

Hallahan, the assessor, being asked to explain this (p. 511): He admits that the timber lands were assessed at 14 per cent more in 1914 than in 1912. His first excuse for this was the claim that he had not the full cruises in 1912 that he had in 1914 (p. 511); but on further cross-examination he is forced to admit that the additional cruises concerned only the lands east of Range 9 and west in Ranges 15 and 16, and had nothing to do with the lands in suit (p. 512). He then claims that the building of the Milwaukee Railroad line from Port Angeles west to the line of Range 9, which road on March 1, 1914, was graded,

increased the value of these lands (p. 513). (It will be remembered that this railroad runs to Mike Earles plant on Port Crescent, some 45 miles from the heart of the plaintiff's lands.) He shifts from this to the claim that he discovered, in his imagination that there was an outlet of a possible railway that might be built by way of Lake Crescent (p. 513), but finally falls back upon the conclusion that he thought the timber was not assessed high enough in 1912 (p. 514).

At page 519, the witness says, on re-direct examination, that while the timber assessment was raised in 1914 10 per cent, city property in Port Angeles was raised 40 per cent; but upon further inquiry from plaintiffs' counsel, it turns out that what he meant was that the aggregate volume of property assessed as town property was increased to this amount and not that the rate of assessment or valuation was increased thus (pp. 522 to 524), although as a fact the city assessments were raised in 1914 as hereafter shown.

Hansen, chairman of the Board of Equalization, admits that the timber lands were worth no more in 1914 than 1912 (p. 643) and the only reason we can get from him was that they were not assessed high enough in 1912. But the only discussion that this chairman of the board had was the "discussion with himself" (p. 644) and he frankly explains the judicial

consideration that the subject of taxation obtained between the Board of Equalization and the assessor, as follows (p. 645):

“Q. At what basis did you understand at the time you were acting upon the Board of Equalization in August, 1914, that the assessor had intended to assess this timber?

A. I do not understand; I do not know what he did, and I never knew what he had assessed the timber at until the Board of Equalization met; because John Hallahan is one of the kind of fellows, and I would say ‘John what are you doing,’ and he would say ‘I can get my knowledge on the first Monday in August the same as everybody else did. That is the kind of a fellow John Hallahan is.’” (p. 646.)

The witness says that the assessor’s valuations were not changed by the Board of Equalization, either raised or lowered (p. 646).

Frank Lotzgesell, the third member of the Board of Equalization, being asked his explanation of this raise in valuation, admits that the plaintiffs in all of these suits made a protest before the Board of Equalization against this raise (p. 537); admits that the raise was some 14 per cent (p. 539), but refuses to give any explanation whatsoever of why such raise was made, other than that the assessor made it and the board passed it without discussion, and the evident conclusion is without consideration (pp. 538 to 540).

Babcock, the treasurer of the county and fourth member of the board, admitted the same thing, namely, that the assessment on the timber lands was raised in 1914 by about 14 per cent (p. 479), and shows that he does not know anything about it as the Board of Equalization passed perfunctorily on the assessment rolls as made by the assessor and he, Babcock, didn't know at what rate the timber lands were being assessed (pp. 470 to 477).

At page 471 the following occurs: Babcock, on cross-examination, is asked if he knew at what rate the assessor intended or purported to assess the property in 1912.

“A. No, I do not.

Q. And you did not know at the time you equalized the taxes in 1912 or 1914?

A. No, sir.

Q. Was there any discussion before the board as to the rate that the assessor had adopted or should adopt?

A. No, sir.”

This covers the assessor and with him four out of five of the Board of Equalization. The other member of the board did not testify in the case.

As showing the actual prejudice of this raise of assessment in 1914 over 1912 against the plaintiffs' lands we tabulate the lands of the Clallam Lumber Company as assessed in the different zones, taken from the exhibit attached to the Bill and admitted

by the defendants, for the year 1913 and the year 1914. The following schedule is the lands of the Clallam Lumber Company shown in Causes No. 2905 and No. 2907:

SCHEDULE "A", CAUSES NOS. 2905 AND 2907

Zone 1.		
1912 and 1913	1914	Raise
\$792,956.72	\$904,095.38	\$111,138.66
Zone 2.		
85,291.13	93,220.39	7,929.26
Zone 3.		
569,407.03	639,111.70	69,704.67
Zone 4.		
23,515.80	29,163.63	5,647.83
Zone 5.		
1,919.10	2,272.88	353.78
	111,138.66	
	7,929.26	
	69,704.67	
	5,647.83	
	353.78	
	<hr/>	
	\$194,774.78 Total Raise.	

From the foregoing it appears that the assessment of the plaintiffs' lands was raised in 1914 over the year 1913 by the amount of \$194,774.20.

SCHEDULE "B"—RUDDOCK AND McCARTHY
LANDS—CAUSES NOS. 2906 AND 2908

Zone 2.		
1912-1913	1914	Raise
\$479,990.00	\$561,395.00	\$81,405.00

XII.

The taxing officers of Clallam County favored those operating manufacturing plants by a low assessment at practically a nominal value of less than 10 per cent of the real value.

The only industrial plants in the neighborhood of Port Angeles in 1914 were the Aldwell, or Olympic Power plant, the Mike Earles Mill, or Puget Sound Mills & Timber Company, a salmon cannery, and some shingle and saw mills (p. 142).

The Olympic Power Company had constructed in Clallam County a hydro-electric plant on the Elwah River at a cost, as reported to the Public Service Commission of the State of Washington, of \$3,415,-526.94, with a capacity of 8,000 net electrical horsepower (p. 157). It was built in the fall of 1910. In October, 1912, a portion of the dam washed out. Repairs to this were completed in October, 1914 (p. 177). It was, however, in operation and generating power in March, 1914 (p. 160. Thomas T. Aldwell, the promoter of it, and president and general manager of the company, called by the plaintiffs, testified that it had cost the above sum in its construction, including the repairs due to the blowout (p. 161). On December 31, 1914, he had furnished a statement to the Public Service Commission of the State of Washington as provided by law, which statement, identified by the witness, was

introduced in evidence as Plaintiffs' Exhibit H, which will be found among the original exhibits, so lettered. This report showed the cost of the plant as \$3,415,-526.94. The lands used in the operation of the property were placed at a valuation of \$1,530,517. All of these lands lay in Clallam County and were assessed for the years 1912, 1913 and 1914 at about \$30.00 per acre (p. 164).

Referring to Plaintiffs' Exhibit T, which is a statement taken from the assessment roll of 1914. This shows the total assessed valuation of this plant, including all personal property, at \$69,640.00 and the assessment on its real property at \$13,795. (This being contained on the first three sheets of Exhibit "T.")

While the temporary washout of this company's dam might excuse the county assessor in making a liberal reduction in his assessment, we think that some other ground must be looked for to explain why this plant, carried on the company's books at a value of \$3,415,526 and over, should be assessed at less than \$85,000.

Hallahan endeavors to explain this in part (p. 623) by saying that this plant was assessed in three different counties, but Aldwell, the manager and president, says that the land (and of course the plant thereon) was practically all in Clallam County (p.

164); so that only a portion of the transmission lines would be left to tax in other counties.

The Puget Sound Mills and Timber Company, a saw mill (sometimes referred to as the Mike Earles Mill), had been completed in April, 1914. Aldwell reported that the insurance surveyors said it was the best equipped mill on the Coast. It would employ 800 men, and would cut 400,000 feet of lumber per day (p. 157).

E. W. POLLOCK, an expert appraiser, called by the plaintiffs, appraised this mill property at the time of the trial from personal examination as being of the then value of \$654,689.15, the items being shown in detail in Plaintiffs' Exhibit EE (found in the original exhibits). Witness had gone through the plant with an assistant, listed each piece of machinery and each piece of property and had made estimates from price lists of duplicating such machinery, and added to that his own estimates of the cost of installation (p. 679). In this list under the head of real property is included only the buildings and structures, the witness not having included any land, not knowing anything about the land value (p. 680). Witness had visited the mill some three years ago, during its construction, when appraising other property (p. 682) and was positive from what he learned at that time and subsequently that the mill was in operation in

March or April, 1914, and he could state from his experience that all the machinery which he had estimated must have been in place there several months before (p. 682).

This witness had been in the appraisal business for fourteen or fifteen years. His firm had appraised about 750 plants in the State of Washington, Oregon and British Columbia (p. 196) and he had been employed to appraise all the manufacturing plants in Chehalis County for the assessor and for the county board in 1914 and 1915 (p. 204).

Referring to Plaintiffs' Exhibit "T" (in original exhibits), on page 4 will be found the assessment of this Mike Earles Mill property for the year 1914 at \$87,450.

Hallahan, called thereafter by the defendants to tell how he assessed this mill property, said substantially (p. 623) that he went down on the 17th of March, alone, and looked over the property. On cross-examination (p. 631) he said he made no list of the machinery or property, no memoranda whatsoever, carried it around in his head until the month of June or July, when he put this assessment on his books of \$87,450 without any further data or information before him (p. 635).

XIII.

ASSESSMENT OF SHINGLE MILLS

The appraiser, Pollock, at the request of plaintiffs, had personally examined and appraised the value of the following shingle mills in the neighborhood of Port Angeles and had obtained the assessor's figures of the assessments thereof for the year 1914, and there was introduced in evidence and filed in connection with his testimony Plaintiffs' Exhibit K, giving this data. We tabulate his figures with reference to the page of the Record where his testimony is found as follows:

Plant—	Record Page	Page of Report	Appraised Value	Assessed Value for 1914
Mason & Babcock.....	196	1	\$ 4032.00	\$ 700
Howell-Hill-Ray Shingle Mill	197	2	4900.00	1590
McKee Box Factory	198	3	656.00	100
Superior Shingle Mill Co. ...	198	4	2352.00	No assess- ment found
Ecret Mill	198	5	3483.75	550
E. R. Waite Shingle Mill...	199	6	3045.00	700
Hansen & Glenert Mill.....	199	7	5636.25	1060
Brown & Drury Shingle Mill	200	8	2173.32	1200
Skavdal Shingle Mill	200	9	4564.00	1500
Sturtevant & Pelerin	201	10	4808.00	1475
Fillion Saw & Shingle Mill..	201	11, 12	17786.25	8265

Witness explains the method of his appraisal valuation (Record pp. 204 to 209).

Hallahan, afterwards called by the defendants, attempts to explain his assessment of these shingle

mills (pp. 618 to 635) only to demonstrate, as we contend, that he assessed them at a nominal value only.

XIV.

All the banks in Clallam County were assessed at a flat rate for 1912 and 1914 at 10 per cent of their capital stock. (See cross-examination of Hallahan, beginning at page 514.)

The Port Angeles Trust & Savings Bank, with a capital stock of \$25,000, was assessed at valuation of \$2,000. The Bank of Clallam County, with a capital stock of \$25,000, was assessed for 1912 at \$3,000 (p. 515).

The Citizens National Bank of Clallam County, with a capital stock of \$25,000, was assessed at \$2,000 (p. 516). The Bank of Sequim in 1912, with a capital stock of \$10,000, was assessed at a valuation of \$1,200 (p. 516). The same rate of taxation was applied to all banks, namely, 10 per cent (p. 517).

Note the shifting demeanor of Hallahan, pages 514 to 518.

See testimony of Hansen, chairman of the Board of Equalization for 1912 and 1914 (p. 662), who admits this method of assessing banks at the flat rate of 10 per cent of the capital stock; admits that Mr. Babcock, the county treasurer, was a director during that time of the Port Angeles Trust & Sav-

ings Bank, and that he, Hansen, was at all times involved in this suit, a director of the Citizens National Bank (p. 662). (Note Hansen's examination upon this subject, pp. 660 to 665).

As further evidence upon this point, see Plaintiffs' Exhibit T (original), last sheet; also the deposition of Schumacher (Record pp. 743 to 747, and Christensen, pp. 748 to 750).

XV.

The assessor and the members of the Board of Equalization were, in a measure, a judicial body to honestly and fairly assess the properties of the plaintiffs in their county, equally and uniformly according to law. And when called upon to answer for their stewardship in a charge of fraud and conspiracy, it was certainly due from them and becoming of them, as a matter of law, to answer frankly and to explain fully the method and reasons for their assessment. Now observe how they met this:

In paragraph XIII of its Bill (reference is here made to Cause No. 2905 and to the Record thereof) the plaintiff, Clallam Lumber Company, charged that it had been the custom and practice of counties in the State of Washington for some time to assess property at from 35 to 50 per cent of its true value, which custom had been recognized and acquiesced in by the

State Board of Equalization; and that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property in Clallam County on a basis of 53 per cent of its true and fair value in money, and that the Board of Equalization of Clallam County gives out and pretend that they equalized and approved the assessments on the same basis, but the plaintiff claims that they had not followed this practice with reference to the timber lands in the interior, but had assessed them at a gross excess over 53 per cent of their true and fair value (p. 11).

The defendants (p. 63) denied the existence of this practice among the counties at large or with Clallam County; denied that they give out or pretend to tax or to equalize property in Clallam County "upon a basis of 53 per cent of its true and fair value in money, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made." Admit that the interior timber lands of the plaintiff were assessed and equalized at valuations in excess of 53 per cent of their true and fair value in money and deny that other properties in Clallam County, real and personal, were assessed at less than 53 per cent of the true and fair value thereof in money (p. 64).

In its Bill, paragraph XIV, plaintiff had charged

that its timber lands and other interior timber lands were assessed upon a basis of approximately $83\frac{1}{2}$ per cent of their true and fair value in money (p. 12).

Defendants, answering this in their amended answer (p. 64), paragraph XIV, say:

“Deny that said assessment for the year 1913 was made upon the basis of $83\frac{1}{2}$ per cent or upon any other or different basis than the true and fair value in money of all the property assessed; deny that no property in Clallam County save the timber lands owned by the plaintiff, and certain other timber lands similarly situated were assessed in said year 1913 at so great a proportion of its true value in money * * *

In paragraph XXIV of plaintiffs' Bill (p. 20) it was alleged that by Section 9112 of Volume III of Remington & Ballinger's Annotated Codes of Washington it is provided that all property shall be assessed at not to exceed 50 per cent of its true and fair value in money.

In their Amended Answer, second affirmative defense, paragraph II (Record p. 78), the defendants plead that this law did not apply to the taxes of 1913 because it did not become operative until after the 12th day of June, 1913.

This was certainly a solemn and binding commitment of the defendants to the fact that they had not assessed and had not intended to assess the plaintiff's lands or any other property of Clallam County

at 50 per cent of its actual value, but at its full value.

But as the trial progressed and the defendants realized that they were caught, as the saying is, "with the goods on them," they realized that the evidence that they could produce would no longer justify the assessment at the full value of 100 per cent of the properties, so they thought they would shift their ground and claim that they assessed at 50 per cent, as well as running up the actual value of the timber. And so, at pages 185 and 186 of the Record, counsel for the plaintiff, upon certain objections to testimony by defendants' counsel, demanded that the defendants declare formally whether they were contending that the properties were assessed at 50 per cent of their true value, and if not at what rate, and the following occurred (p. 187):

"THE COURT: I know you are presuming if there is a statute there that these officers followed the law.

MR. FROST (for defendants): The statute provides, and we deny the constitutionality of the statute. The statute simply provides that property shall not be assessed over fifty per cent of its value.

THE COURT: Do you deny that it is constitutional?

MR. FROST: We deny the constitutionality of the statute. We have set that up in our answer.

THE COURT: Then you disclaim that it was assessed at fifty per cent?

MR. FROST: We are disclaiming that it was assessed at fifty per cent.

THE COURT: You are disclaiming that there was any effort to keep it down or to keep it at fifty per cent?

MR. FROST: We are disclaiming that it was any effort to keep it down or to keep it at fifty per cent. * * *

Now take the testimony of Hallahan, the assessor, on cross-examination by the plaintiffs (p. 502):

“Q. Mr. Hallahan, on what basis did you assess the property in 1912 in Clallam County?

A. What do you mean by ‘basis’?

Q. Did you assess it at its full market value, or at a percentage of its market value?

A. Does that enter into this case? I thought my assessment was on the files here. I thought my assessment was on trial before this Court. I thought that was for you people to determine.

Q. (Question read).

A. I did not assess it at its full market value.

Q. At what value did you assess it?

A. Do I have to answer that question?

THE COURT: Yes, sir.

A. What percentage you mean, don’t you?

Q. At what percentage, yes sir.

A. Is that what you have reference to?

Q. Yes sir; at what percentage did you assess it at?

A. The percentage I assessed in 1912?

Q. You have heard the question and you know all about it; now answer it.

A. That was for 1912. The percentage that I assessed all the property of Clallam County?

Q. Yes sir.

A. Around about fifty per cent.

Q. Did you assess the timber lands at fifty per cent?

A. I endeavored to do that.

Q. And the city property at Port Angeles at fifty per cent?

A. I endeavored to the best of my ability, and the information at hand at that time, to assess property at about fifty per cent.

Q. What do you mean by 'about fifty per cent'?

A. I mean around about fifty per cent.

Q. How near around about it?

A. You want me to determine why and how I done it?

Q. Answer the question. How near around about fifty per cent you assessed the property in 1912?

A. I assessed it as near fifty per cent as I could.

Q. Was it your intention to assess it at fifty per cent, or at fifty-one per cent?

A. Fifty per cent."

* * *

The witness, having made the plunge, splashes around quite freely for several pages on the fifty per cent basis. Then follows the witness' further quibbling and evasions about the method and reasons for the zone system heretofore pointed out.

Hansen, the chairman of the Board of Equalization, asked as to what rate he assessed the timber (p. 642):

"Q. At what did you propose to assess it?

A. Equally.

Q. Equally?

A. 1912—I left it entirely to the assessor.

Q. What rate did you assess it in 1912?

* * *"

(Objections by defendants).

"Q. * * * What rate did you understand when you were equalizing the rolls in 1912 that the timber land of these plaintiffs and others were assessed at?

A. I could not tell you; that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce, eighty cents, and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion, and I have always gone according to my own opinion. My opinion is that that was assessed at less than one-third at that time." (p. 642.)

See also this witness' testimony at pages 645 and 646. At page 646 the witness admits that the Board of Equalization did not raise or lower any of the timber valuations put upon the roll by the assessor.

Take now the testimony of Babcock, the treasurer (p. 466):

"Q. You were on the board, I think you said, in 1913, as well as 1914?

A. Yes sir.

Q. On the Board of Equalization?

A. Yes sir.

Q. What did you assess the property at, what rate did you assess the Port Angeles property at in the rolls of 1912?

A. We did not assess the Port Angeles property at all.

Q. What did you equalize it at?

A. We did not have any tax rate.

Q. What did you pretend to equalize it at?

A. To have all the property as near alike, I suppose, regardless of percentage.

Q. What value did you place upon the properties for the purposes of equalization, fifty per cent of its value, or one hundred per cent of its value?

A. We did not have any occasion to place any valuation.

Q. You did not gauge with reference to its actual value or fifty per cent of its value?

A. Only in comparison.

Q. Comparison with what?

A. Other property.

Q. Just other property?

A. Yes sir.

Q. Then the Board of Equalization, in passing upon the roll of 1912, paid no attention to the assessed value of property in Port Angeles as to whether it was put down by the assessor at half its value or at one hundred per cent of its value?

A. No sir.

* * *

(Here follows a discussion on the Court's ruling on objection.)

Q. That doesn't answer the question. Did you consider the property as assessed on the roll of 1912 when it was before you for equalization as on the basis of fifty per cent of its actual or market value, or as assessed at one hundred per cent of its market or actual value?

A. Neither one.

Q. Neither one?

A. No sir.

Q. You paid no attention to that standard?

A. No sir.

Q. Is that true of the equalization of the rolls of 1914?

A. I think so.

Q. The same thing?

A. I think that held good during all of my official connection with the Board of Equalization."

* * *

Lotzgesell, the fourth member of the Board of Equalization, in his examination (pp. 540, 546 to 548) shows that, as heretofore outlined, he had no knowledge of what rate the properties were assessed or intended to be assessed at, exercised no judgment whatever but simply O K'd the assessor's returns.

After the close of the evidence in this case, and at the time of the argument thereof, the defendants asked leave of the court to amend their answers filed in the cases, in order, as they contended, to make the allegations conform to the proofs in the particulars hereinafter set out. This was objected to by the plaintiffs on the ground that the proposed amendments did not conform to the proofs, but were directly contrary to and inconsistent with the proofs, and contrary to the issues made by the defendants and the theory upon which the cases were tried by the defendants, and were unfair to plaintiffs (Record p. 757).

The objections were overruled and the amendments allowed, to which the plaintiffs reserved exceptions.

Thereafter, on the 3rd day of February, 1916, the defendants filed in the several cases their so-called Second Amended Answer, containing these amend-

ments allowed by the court as aforesaid, which are set out on pages 82 to 86 of the Record, to which amendments, as embodied in the answer filed on February 3, 1916, the plaintiffs filed their exceptions, which were allowed and signed by the court on said day (pp. 829 to 831).

These amendments, with their contrast to the original pleadings are best set out, perhaps, in the Assignments of Error V and VI, from which we repeat the following (pp. 839 to 841):

(a) "In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization" (p. 63, par. XIII, defendants' First Amended Answer).

In said Second Amended Answer they

"Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the State Board of Equalization"—

meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value (p. 82, Stipulation as to Contents of Second Amended Answer).

(b) In their former answer they had

“Denied that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessment for the years 1912 and 1913 were made.* (Italics our own.)

Defendants’ Answer, p. 63, par. XII.)

In their Second Amended Answer they plead the above denial, omitting that portion in italics.

(c) In their First Amended Answer, paragraph XII, they had plead as follows:

“Admit that the interior timber lands in said county, including lands owned by the plaintiff, were and are valued in the year 1913 for the purposes of taxation at sums in excess of 53 per cent of the true and fair value thereof in money.”

In their Second Amended Answer they deny this allegation (p. 82, Assignment VI).

(d) In their First Amended Answer they allege at paragraph XIV thereof the following:

“Deny that said assessment for the year 1914 was made upon the basis of 83½ per cent *or upon any other or different basis than the true and fair value in money of the property assessed.*

The italics are our own. R. p. 64.)

Whereas the Second Amended Answer contains the following:

“Deny that said assessment for the year 1913 was made upon the basis of 83½ per cent”;

omitting the above clause here put in italics. Record p. 83.)

We respectfully submit that it was error upon the part of the trial court to allow this amendment of pleadings, after the close of the case, where such amendments wholly contradicted the express and solemn pleading of the defendants and the position which they had assumed throughout the trial upon challenge by the plaintiffs. That the case should be considered on the admissions of the defendants that they undertook to assess the timber lands at 100 per cent of their true value, while the law required them to assess at 50 per cent of this value.

XVI

But whatever the justice of the court's ruling as a matter of trial or practice, and as a matter of admission by pleading or election, the course pursued by the defendants in the trial, the shifts, evasions and changes of front connected with the testimony of the assessor and members of the Board of Equalization, is certainly strong and compelling evidence of the fraudulent design of these taxing officers against the non-resident and non-operating timber owners of Clallam County and in favor of their own home constituents.

The same matters hereinabove referred to were pleaded in all four cases in substantially the same form, answered in the same form by the defendants, the same amendments made after trial, and the same exceptions made and brought forward in the Assignments of Error in each case.

The course admittedly pursued by the Board of Equalization in perfunctorily O K-ing the assessment roll as made by the assessor, without any examination into the rate or manner in which he had made the assessment or at which the property was assessed, and without knowing how it was assessed, without the exercise of any independent judgment of their own as to the justice of it, demonstrates the fact that there has been no assessment of these properties for 1913 or 1914, as there was no exercise of honest or intelligent judgment by this *quasi* judicial body.

The functions of a Board of Equalization generally are thus set forth in 37 Cyc. 1091:

“In reviewing an individual assessment, the Board of Equalization is bound neither by the valuation placed on the property by its owner, nor by that of the assessor, and it is not acting as an arbitrator between these two parties, but as an official body charged with the duty of ascertaining the true taxable value of the property; therefore it may make such changes in assessment as are necessary to carry its determination into effect”;

citing a number of cases.

It is expressly held in this state that the action of the Board of Equalization is a necessary part of the assessment of valuations, and it must follow that until it has so acted there has been no assessment.

Hunt vs. Fawcett, 8 Wash. 399:

“On that day the work of the State Board of Equalization was completed and then and not until then did the value of the property in the county for purposes of state and county taxation become fixed and certain.”

In *State ex rel. Thompson vs. Nicholls*, 29 Wash. 157, it is held that the valuation of real property may be changed in the odd numbered years in spite of the statute providing for its assessment biennially in even numbered years (see p. 174).

Our statute is so express and definite in this matter that there is no room for argument. Remington & Ballinger's Code, Section 9200, defining the powers of the Board of Equalization:

“They shall examine and compare returns of the assessment of the property of the county, and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days notice

shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof," etc.

XVII.

It appears in this case that these plaintiffs had protested to the Board of Equalization in the years 1912, 1913 and 1914 against this illegal and fraudulent assessment, but without relief. However, under the statutes and practice in the State of Washington it is not necessary to appear before the Board of Equalization in order to demand relief of this kind in a court of equity.

Olympia Water Works vs. Thurston County,
14 Wash. 268.

Miller vs. Pierce County, 28 Wash. 110.

Whatcom County vs. Fairhaven Land Co., 7
Wash. 101.

Puget Realty Co. vs. King County, 50 Wash.
352.

XVIII.

COMPARISONS OF ACTUAL VALUES AND
ASSESSED VALUES OF TOWN LOTS IN PORT
ANGELES AND AGRICULTURAL LANDS IN
THE EAST END OF THE COUNTY.

The evidence upon this branch of the case is very voluminous. Dealing as it does with a large number of town lots and going into the details of the physical and commercial relations and locations of these lots, it is impossible in a written brief to treat this subject in other than a general way, and to point out to the court where the evidence may be found in the record, in order to show, as we claim it does, that the property was assessed for taxation at from 10 to 25 per cent only of its value.

WILLIAM J. WARE, produced as a witness by the plaintiffs, says that he resides in Port Angeles, has been acquainted with the values of real property in Clallam County for many years; has been engaged in the real estate and insurance business. At the request of the plaintiffs he had gone over the values of the lots in the business section of Port Angeles and had taken a plat of the city and marked on it his valuations of the lots (p. 129), which is introduced in evidence as plaintiffs' Exhibit "C." Referring to this map he gives the valuations of the particular lots. This pro-

perty covers the entire central and business portion of Port Angeles (p. 140).

There was filed in connection with the testimony of the Witness Ware a tabulation of his valuations of said lots, set opposite the assessed valuations of said property for the years 1912 and 1914, as Exhibit "Q" (p. 142). The figures in red ink on said Exhibit "Q" showing the witness' estimate of the value, it being admitted by counsel on both sides, and the court, that such statements on the tabulation be taken as the actual showing of the assessor's books as to the assessed values, and that the tabulation shall stand as the testimony of the witness as to values; but on this Exhibit "Q" the column headed "Assessed Value for 1910" and the first column, "Valuation by Appraisal Committee," which are lined out in pencil, should be considered as stricken out as not competent (p. 142).

Ware's testimony covers pages 128 to 143 of the record.

THOMAS J. ALDWELL, called by the plaintiffs (p. 150) testifies that he has been a citizen of Port Angeles about twenty-five years; is engaged in the real estate and insurance business and is vice-president and general manager of the Olympic Power Company.

On April 29, 1914, the witness had written the plaintiffs' witness, Grasty, two letters (Exhibits F and

G) (Record pp. 155, 156) commenting on the disproportion between the real and assessed valuations of Port Angeles property and enclosing to Grasty a type-written list of properties in the heart of the City of Port Angeles, which Aldwell and a number of the prominent business citizens of Port Angeles had made up and signed, as expressing their judgment of the value on February 1, 1914, of these lots. This table of values had been gotten up to satisfy would-be investors in local improvement bonds, of the value of central business property. Plaintiffs produced these letters and a photographic copy of the citizens committee tabulation of values (p. 156). They were identified by Aldwell as genuine (p. 151), were offered and received in evidence as plaintiffs' Exhibits E, F and G, (pp. 176, 177), the original of the photographic copy being lost and not being assessible to plaintiffs; the court, however, holding that Exhibit E, being the tabulation of values, was not binding as representing the signers to it, other than Aldwell. This letter of Aldwell's (Exhibit F) will be found printed in the record at page 775. Exhibit E, the tabulated statement, F and G, will be found in the original exhibits.

Aldwell endeavors to escape the effect of what, upon the witness stand he calls unjustifiedly higher values, that he had placed upon the property in this statement, with the explanation that this was an opti-

mistic view that he took of affairs at that time. Aldwell, however, being a citizen and property holder of Port Angeles and aligned in interest directly with the defendants, and clearly so from his demeanor upon the witness stand, was more likely correct and disinterested when he compiled this written statement of February, 1914, than now, when placed upon the stand and called upon to contradict and indict his fellow citizens of twenty-five years' standing. His attempted recantation and repudiation of his former solemn written statement is, we submit, significant proof of the plaintiff's claim that the taxing officers and citizens of Port Angeles were in league in this conspiracy.

The following is a table of the values given by Aldwell in this Exhibit "E," alongside of the valuations given on the same property by Ware, as shown in plaintiffs' Exhibit "Q," with the assessments of this property in 1912 and 1914:

Dist No. 1, Block 1, Tidelands, West of Laurel Street—

		Aldwell's	Assessed Ware's	Assessed Ware's	
		Values	Valuation 1912	Valuation 1914	Valua. 1914
Lot	1.....	\$18,000	\$2,100	\$15,000	\$6,500 \$25,000
Lot	2.....	12,000	1,650	12,000	4,000 16,000
Lot	3.....	10,000	1,550	8,500	3,100 14,000
Lot	4.....	10,000	1,550	8,500	3,100 14,000
Lot	5.....	10,000	1,550	8,500	3,100 14,000
Lot	6.....	10,000	1,550	8,500	3,000 13,000
Lot	7.....	10,000	1,450	8,500	2,900 13,000

		Aldwell's	Assessed Ware's	Assessed Ware's	Ware's
		Values	Valuation 1912	Valuation 1914	Valua. 1914
Lot	8.....	10,000	1,450	8,000	2,900
Lot	9.....	10,000	3,590	8,000	7,400
Lot	10.....	12,500	3,590	11,000	7,400
		112,500	16,440	(96,500)	36,000
					(152,000)

Block 1 East of Laurel Street—

Lot	1.....	\$12,500	\$1,760	\$12,000	\$5,000	\$18,000
Lot	2.....	10,000	1,250	7,000	3,500	13,000
Lot	3.....	10,000	1,250	7,500	3,100	14,000
Lot	4.....	10,000	1,250	8,000	3,100	15,000
Lot	5.....	10,000	1,250	8,000	3,100	15,000
Lot	6.....	10,000	1,250	8,000	3,100	16,000
Lot	7.....	10,000	1,250	9,000	3,100	17,000
Lot	8.....	12,500	1,500	10,000	4,000	18,000
Lot	9.....	18,000	2,100	15,000	6,500	25,000
		103,000	12,860	(84,500)	34,500	(151,000)

Block 2 East of Laurel Street—

Lot	6.....	\$ 2,500	\$ 650	\$5,000	\$2,200	\$ 8,000
Lot	7.....	3,000	750	6,000	2,300	10,000
Lot	8.....	4,000	850	8,000	3,000	12,000
Lot	9.....	7,500	1,730	12,000	4,000	18,000
		17,000	3,980	(31,000)	11,500	(48,000)

Block 14, Townsite of Port Angeles—

Lot	1.....	\$ 7,500	\$1,000	\$6,000	\$2,000	\$11,000
Lot	2.....	5,500	800	3,000	1,600	6,000
Lot	3.....	5,000	700	3,000	1,400	6,000
Lot	4.....	4,000	650	2,500	1,300	5,500
Lot	5.....	4,000	650	2,500	1,300	5,000
Lot	16.....	6,000	700	4,000	1,700	7,500
Lot	17.....	6,000	700	4,000	1,800	8,000
Lot	18.....	6,500	700	4,000	1,800	8,000
Lot	19.....	7,500	850	4,000	2,000	8,000

		Aldwell's	Assessed Ware's	Assessed Ware's	Assessed Ware's
		Values	Valuation 1912	Valuation 1914	Valua. 1914
Lot 20.....	10,000	1,000	8,000	2,600	15,000
		<hr/>	<hr/>	<hr/>	<hr/>
		62,000	7,750 (41,000)	17,500	(80,000)

Block 15, Townsite of Port Angeles—

Lot 1.....	\$18,000	\$1,800	\$12,000	\$4,500	\$20,000
Lot 2.....	14,000	1,350	6,000	3,000	9,500
Lot 3.....	12,000	1,250	6,000	2,500	9,500
Lot 4.....	12,000	1,250	6,000	2,500	9,500
Lot 5.....	12,000	1,250	6,000	2,500	9,500
Lot 6.....	12,000	1,150	6,000	2,400	9,500
Lot 7.....	12,000	1,150	5,500	2,300	9,000
Lot 8.....	12,000	1,150	5,000	2,300	8,000
Lot 9.....	12,000	1,150	5,000	2,400	8,000
Lot 10.....	15,000	1,350	8,000	3,000	12,000
Lot 11.....	10,000	1,000	8,000	2,700	12,000
Lot 12.....	7,500	900	4,000	2,200	8,000
Lot 13.....	7,000	800	4,000	2,000	8,000
Lot 14.....	7,000	800	4,000	2,000	8,000
Lot 15.....	7,000	800	4,000	2,000	8,500
Lot 16.....	7,000	800	4,000	2,000	9,000
Lot 17.....	7,000	800	4,000	2,000	9,000
Lot 18.....	7,000	800	4,000	2,000	9,000
Lot 19.....	8,000	900	4,000	2,500	9,000
Lot 20.....	12,000	1,000	16,000	3,500	17,500
		<hr/>	<hr/>	<hr/>	<hr/>
		210,500	21,450 (121,500)	50,300	(202,500)

Lot 16, R. S. Smith's Subd.—

Lot 1.....	\$ 6,500	\$1,150	\$3,500	\$3,000	\$ 8,500
Lot 2.....	5,000	1,000	4,000	2,500	8,000
Lot 3.....	6,500	1,100	4,000	2,500	8,500
Lot 4.....	7,500	.....	.....	.....	9,000
Lot 5.....	8,500	3,395	5,000	.....	9,500
Lot 6.....	9,000	.....	5,000	.....	9,500
Lot 7.....	12,000	1,250	5,000	2,500	9,500
Lot 8.....	12,000	1,350	5,000	3,000	9,500

		Aldwell's Values	Assessed Ware's Valuation 1912	Assessed Ware's Valuation 1914	Assessed Ware's Valuation 1914
Lot 9.....	18,000	1,800	12,000	4,500	20,000
Lot 10.....	18,000	1,000	10,000	3,500	17,500
Lot 11.....	8,000	850	5,000	2,500	9,000
Lot 12.....	7,000	700	4,500	2,000	8,500
Lot 13.....	7,000	700	4,000	2,000	8,000
Lot 14.....	7,000	700	4,000	2,000	7,500
Lot 15.....	7,000	650	4,000	2,000	7,500
Lot 16.....	7,000	650	3,500	2,000	6,500
Lot 17.....	7,000	650	3,500	2,000	6,500
Lot 18.....	9,000	750	4,000	2,500	7,000

162,000 17,695 (90,500) 46,110 (170,000)

Block 17, N. R. Smith's Subd.—

Lot 8.....	\$ 1,200	\$ 400	\$1,500	\$1,000	\$ 3,000
Lot 9.....	5,000	800	2,500	2,000	5,000
Lot 10.....	6,000	600	3,000	2,000	6,000
Lot 11.....	4,500	500	2,500	1,000	5,000
	<u>16,700</u>	<u>2,300</u>	<u>(9,500)</u>	<u>6,000</u>	<u>(19,000)</u>

Block 32 Townsite Port Angeles—

Lot 2.....	\$ 4,500	Not listed	\$1,400	\$ 4,500
Lot 3.....	4,500	“ “	1,400	4,500
Lot 4.....	4,500	“ “	1,400	4,500
Lot 5.....	4,500	“ “	1,400	4,500
	<u>18,000</u>		<u>5,600</u>	<u>(18,000)</u>

Block 31, N. R. Smith's—

Lot 1.....	\$ 7,500	\$ 800	\$4,000	\$2,000	\$ 7,500
Lot 2.....	6,000	700	3,000	1,500	6,000
Lot 3.....	6,000	650	3,000	1,500	6,000
Lot 4.....	6,000	650	3,000	1,500	6,000
Lot 5.....	6,000	650	3,000	1,500	6,000
Lot 6.....	6,000	650	3,000	1,500	6,000
Lot 7.....	6,000	650	3,000	1,500	6,000

		Aldwell's	Assessed Ware's	Assessed Ware's	Assessed Ware's
		Values	Valuation 1912	Valuation 1914	Valua. 1914
Lot	8.....	6,000	650	3,000	1,500
Lot	9.....	7,500	800	4,000	2,000
		<hr/>	<hr/>	<hr/>	<hr/>
		57,000	6,200	(29,000)	14,500
					(57,500)

Block 30, N. R. Smith's—

Lot	8.....	\$ 3,000	\$ 300	\$1,750	\$1,000	\$ 3,500
Lot	9.....	3,000	300	3,000	1,500	5,000
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		6,000	600	(4,750)	2,500	(8,500)

Block 17, Thompson & Goodwin's—

Lot	1.....	\$ 1,500	\$ 400	\$2,000	\$ 800	\$ 4,000
Lot	2.....	1,200	300	1,500	600	3,000
Lot	3.....	1,200	300	1,300	600	2,500
Lot	4.....	1,200	300	1,300	600	2,500
Lot	5.....	1,200	300	1,300	600	2,500
Lot	6.....	1,200	300	1,500	700	3,000

N. R. Smith's—

Lot	7.....	\$ 1,200	\$ 300	\$1,250	\$ 800	\$ 3,000
Lot	12.....	3,500	400	2,000	800	4,000

Thompson & Goodwin's—

Lot	13.....	\$3,500	\$300	\$1,750	\$600	\$3,500
Lot	14.....	3,500	300	1,500	600	3,000
Lot	15.....	3,500	300	1,500	600	3,000
Lot	16.....	4,000	300	1,300	600	2,500
Lot	17.....	4,000	300	1,300	600	2,500
Lot	18.....	4,000	350	1,750	700	3,500
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		34,700	4,450	(21,250)	9,200	(42,500)

Block 18, Stratton's—

Lot	1.....	\$ 5,000	\$ 500	\$2,500	\$ 800	\$ 5,000
Lot	2.....	3,500	400	2,000	600	4,000
Lot	3.....	3,500	400	1,300	600	2,500
Lot	4.....	3,500	400	1,300	600	2,500

N. R. Smith's—

	Aldwell's Values	Assessed Ware's Valuation 1912	Assessed Ware's Valuation 1914	Assessed Ware's Valua. 1914
Lot 6.....	\$ 3,500	\$ 400	\$1,000	\$ 600
Lot 7.....	3,500	400	1,000	600
Lot 8.....	3,500	400	1,000	600
Lot 9.....	3,500	450	1,500	800
Lot 10.....	3,500	350	2,000	700
Lot 11.....	3,500	300	2,000	600
Lot 12.....	3,500	300	1,700	600
Lot 13.....	3,500	300	1,700	600

Stratton's—

Lot 15.....	\$ 3,500	\$ 300	\$1,300	\$ 600	\$ 2,500
Lot 16.....	3,500	300	1,300	600	2,500
Lot 17.....	3,500	350	1,500	600	3,000
Lot 18.....	4,500	400	1,750	800	3,500
	<hr/> 58,500	<hr/> 5,900	<hr/> (24,850)	<hr/> 10,300	<hr/> (46,000)

Block 19, N. R. Smith's—

Lot 1.....	\$ 3,500	\$ 400	\$1,150	\$ 600	\$ 2,500
Lot 2.....	2,500	350	1,000	550	2,000
Lot 3.....	2,500	350	1,000	550	2,000
Lot 4.....	2,500	350	1,000	550	2,000
Lot 5.....	2,500	350	1,000	550	2,000
Lot 6.....	2,500	350	1,000	550	2,000

Strattons—

Lot 8.....	\$ 3,500	\$ 400	\$1,500	\$ 600	\$ 3,000
Lot 9.....	4,500	500	2,000	800	4,000
Lot 10.....	4,500	400	1,750	800	3,500
Lot 11.....	3,500	350	1,500	600	3,000

N. R. Smith's—

Lot 13.....	\$ 3,000	\$ 250	\$1,250	\$ 500	\$ 2,500
Lot 14.....	3,000	250	1,250	480	2,500
Lot 15.....	3,000	250	1,250	460	2,500
Lot 16.....	3,000	250	1,250	460	2,500

		Aldwell's	Assessed Ware's	Assessed Ware's	Assessed Ware's
		Values	Valuation 1912	Valuation 1914	Valua. 1914
Lot 17.....	3,000	250	1,250	460	2,500
Lot 18.....	3,500	300	1,500	500	3,000
		<hr/>	<hr/>	<hr/>	<hr/>
		50,500	5,350 (20,650)	9,010	(41,250)

Block 20, N. R. Smith's—

Lot 1.....	\$ 3,500	\$ 350	\$1,000	\$ 500	\$ 2,000
Lot 2.....	2,500	300	900	450	1,750
Lot 3.....	2,500	300	900	450	1,750
Lot 4.....	2,500	300	900	450	1,750
Lot 5.....	3,000	300	900	450	1,750
Lot 6.....	3,000	300	900	500	1,750
Lot 7.....	3,000	300	900	500	1,750
Lot 8.....	3,000	350	900	500	1,750
Lot 9.....	3,000	400	1,000	550	2,000
Lot 10.....	4,000	300	1,200	450	2,500
Lot 11.....	3,000	250	1,000	400	2,000
Lot 12.....	2,500	250	1,000	400	2,000
Lot 13.....	2,500	250	1,000	400	2,000
Lot 14.....	2,500	250	1,000	400	2,000
Lot 15.....	2,500	250	1,000	400	2,000
Lot 16.....	2,500	250	1,000	400	2,000
Lot 17.....	2,500	250	1,000	400	2,000
Lot 18.....	3,500	300	1,200	450	2,500
		<hr/>	<hr/>	<hr/>	<hr/>
		51,500	5,250 (17,700)	8,050	(35,250)

Block 30, Thompson & Goodwin's—

Lot 1.....	\$ 4,000	\$ 350	\$1,750	\$ 700	\$ 3,500
Lot 2.....	4,000	300	1,300	600	2,500
Lot 3.....	4,000	300	1,300	600	2,500
Lot 4.....	3,500	300	1,500	600	3,000
Lot 5.....	3,500	300	1,300	600	2,500
Lot 6.....	3,500	300	1,300	600	2,500
Lot 7.....	3,500	300	1,500	800	3,000
		<hr/>	<hr/>	<hr/>	<hr/>
		26,000	2,150 (9,950)	4,500	(19,500)

Block 29, Stratton's—

	Aldwell's Values	Assessed Ware's Valuation 1912	Assessed Ware's Valuation 1914	Assessed Ware's Valua. 1914	
Lot 1.....	\$ 4,500	\$ 400	\$1,750	\$ 800	\$ 3,500
Lot 2.....	3,500	350	1,500	600	3,000
Lot 3.....	3,500	300	1,300	600	2,500
Lot 4.....	3,500	300	1,300	600	2,500

N. R. Smith's

Lot 6.....	\$ 3,500	\$ 300	\$1,250	\$ 600	\$ 2,500
Lot 7.....	3,500	300	1,250	600	2,500
Lot 8.....	3,500	300	1,500	600	3,000
Lot 9.....	4,000	350	2,000	700	3,500
	<hr/> 29,500	<hr/> 2,600	<hr/> (11,850)	<hr/> 5,100	<hr/> (23,000)

Block 28, N. R. Smith's—

Lot 8.....	\$ 3,500	\$ 350	\$1,500	\$ 600	\$ 3,000
Lot 9.....	4,500	400	2,000	800	3,500
	<hr/> 8,000	<hr/> 750	<hr/> 3,500	<hr/> 1,400	<hr/> (6,500)

Block 27, N. R. Smith's—

Lot 1.....	\$ 4,000	\$ 300	\$1,100	\$ 450	\$ 2,500
Lot 2.....	3,000	250	800	400	2,000
Lot 3.....	2,500	250	800	400	2,000
Lot 4.....	2,500	250	800	400	2,000
Lot 5.....	2,500	250	800	400	2,000
Lot 6.....	2,500	250	800	400	2,000
Lot 7.....	2,500	250	800	400	2,000
Lot 8.....	2,500	250	800	400	2,000
	<hr/> 22,000	<hr/> 2,050	<hr/> (6,700)	<hr/> 3,250	<hr/> (16,500)

Dist. No. 4, Block 30, N. R. Smith's—

Lot 10.....	\$ 2,500	\$ 150	\$ 600	\$ 500	\$ 1,500
Lot 11.....	1,500	50	400	300	1,000
Lot 12.....	600	50	350	200	900

Thompson & Goodwin's—

		Assessed Ware's		Assessed Ware's	
		Aldwell's	Valuation 1912	Valuation 1914	Valua. 1914
		Values	1912	Valuation 1914	1914
Lot 13.....	\$ 600	\$ 60	\$ 400	\$ 150	\$ 850
Lot 14.....	500	80	400	120	850
		<hr/>	<hr/>	<hr/>	<hr/>
		5,700	390	(2,150)	1,270
					(5,100)

Block 31, N. R. Smith's—

Lot 14.....	\$2,000	\$300	\$750	\$450	\$1,500
Lot 15.....	3,000	300	750	450	1,500
Lot 16.....	3,000	300	750	450	1,500
Lot 17.....	3,000	300	750	450	1,500
Lot 18.....	4,000	300	1,000	600	2,000
		<hr/>	<hr/>	<hr/>	<hr/>
		15,000	1,500	(4,000)	2,400
					(8,000)

Block 54, Townsite Port Angeles—

Lot 1.....	\$ 2,500	Not listed		\$ 550	\$ 2,000
Lot 2.....	2,000			400	1,500
Lot 3.....	2,000			400	1,500
Lot 4.....	2,000			400	1,500
Lot 5.....	2,000			400	1,500
Lot 12.....	1,000			350	900
Lot 13.....	1,000			350	900
Lot 14.....	1,000			350	900
Lot 15.....	1,000			350	900
Lot 16.....	1,000			350	900
Lot 17.....	1,000			300	900
Lot 18.....	1,000			300	900
		<hr/>	<hr/>	<hr/>	<hr/>
		17,500		4,500	(14,300)

Block 69, Townsite—

Lot 1.....	\$ 1,500	Not listed		\$ 350	\$ 900
Lot 5.....	1,500			350	900
Lot 6.....	1,500			350	900
Lot 7.....	1,500			350	900

		Aldwell's Values	Assessed Ware's Valuation 1912	Assessed Ware's Valuation 1914	Assessed Ware's Valua. 1914
Lot	8.....	1,500		350	900
Lot	9.....	2,000		400	900
		<hr/> 9,500	<hr/>	<hr/> 2,150	<hr/> (5,400)

The defendants called as expert witnesses upon city property the following:

C. L. HAGGITH, who tabulates his values in Defendants' Exhibit 37 (p. 611). He admits on examination that this covers property that is not and never has been commercially valuable, is largely under tide-water and was selected for him by the defendants' attorneys.

LEWIS LEVY (p. 587), who should never be separated from his letter to Grasty (Plaintiffs' Exhibit "N," page 772), and who after placing a valuation of \$10,000 on his former Lot 1, Block 15, in his valuation evidence, admitted that he sold it for \$25,000 and that it earned a handsome rental return on that valuation (p. 596).

LAURIDSEN (p. 414), formerly a county commissioner and a beneficiary through his bank by the system of low assessments, whose tabulation was admittedly largely "wild cat" property.

C. C. HENRY (p. 598), another large owner of "wild cat" property, or outlying property purchased on certificates of delinquency, and whose tabulation lists covered a district that he had never handled in

any way and as to which he was thoroughly disqualified.

With reference to values of city property in Port Angeles a great effort was made by the defendants to prove that an abnormal boom condition existed in Port Angeles, beginning in the late fall of 1912 and early part of 1913, and hence that values put on Port Angeles property by the plaintiffs' witness Ware were from a temporary viewpoint. But the pronounced increase in the value of Port Angeles property between 1912 and 1914, as shown by Ware's testimony, is remarkably verified by the defendants' evidence under this head. The Defendants' Exhibit 38 shows that Hallahan, the assessor, increased the assessed valuation of Port Angeles real estate in 1914 over the preceding assessment, about 70 per cent. Plaintiffs' Exhibit "Q" shows that business property of Port Angeles was considered by the assessor in a great many instances to have doubled or trebled in 1914; at least the assessor doubled or trebled the assessment. Hallahan, the assessor, is the one witness with whom the defendants must stand or fall. If he was right in his assessment as shown by Defendants' Exhibit 38, and Plaintiffs' Exhibit "Q," then Ware is right, for his values are remarkably consistent with and verified by the exhibits referred to. And if Ware is wrong and these values did not increase in 1914 over 1912, then the reason for the

assessor's increase of their assessment must have been to escape the disclosures which would follow the first suits brought by the plaintiffs in May, 1914.

Now, with respect to agricultural lands. Ware testified for the plaintiffs and submitted a tabulation of his values of these lands, shown as Exhibit "R" (p. 142). (The figures in red ink on original exhibit). That four sections of Sequim were worth in 1914 from \$200 to as high as \$400 per acre, and the same exhibits show that these lands were assessed on an average of \$50 per acre. The lands in the Dungeness valley would run about the same.

This testimony was corroborated by the hostile witnesses, Adams (testimony commencing on page 698) and Garlick (testimony commencing on page 773). Adams testified (pp. 703 to 705, etc.) that his own farm, 30 acres renting for \$600 per year, was a fair sample of the prairie lands worth about \$200 per acre. He said (p. 703):

"There is not a bit of difference in any of this land that is being irrigated around here."

The Dungeness land he considered as better yet (p. 718) and the farmers were making good returns from it at the present valuation.

Both Adams and Garlick very reluctantly testified relative to the popular pressure brought on the taxing

officers to raise the timber assessments (pp. 721, 724 to 737).

Opposing this evidence is that of the defendants' one witness, J. L. Keeler, whose testimony we contend is completely discredited and himself impeached by his written statements on the back of Plaintiffs' Exhibits U and V (pp. 559, 561). His code of business morals is indicated (pp. 564, 565) by his testimony that he would be more likely to tell the truth to a purchaser from his own neighborhood. As to others he said: "I might tell them the truth and I might lie to them."

The properties in Sequim prairie and Port Angeles have been selected and treated as typical of real properties in all parts of the county. It is obviously impossible to cover all sections, but the property selected, together with the cases of the banks, mills, the Olympic Power Company, etc., show the discrimination designed and accomplished against the owners of timber lands, this class of property constituting the greater bulk of the assessable valuation of the county and practically all owned by non-residents.

XIX.

By the overwhelming weight of the evidence it was demonstrated that hemlock on the interior timber lands had no appreciable market value whatever, be-

cause it cannot be rafted; it is too heavy to float; it is not of sufficient value to ship on barges, and would not pay at the present time to cut it on the interior and ship it in lumber.

We cite the testimony of defendants' expert timber witnesses as follows:

Chisholm, general manager for Merrill & Ring (p. 326):

"I should not call hemlock of any particular value down there."

Newbury (p. 333), thinks hemlock of no value whatever except as it could be used in logging operations.

McGuire (p. 345), considers the hemlock that he saw of very little value, either of the interior or the Straits timber.

Wanamaker (p. 358). Witness put no value upon hemlock either in 1912 or 1914. This is true of both the lands of the interior and those of the Straits.

R. D. Merrill (p. 384), says that hemlock, if one has to tow it to market, is not worth much, but may be utilized if you have a railroad and saw it on the ground; says it could be carried on a barge to some railroad terminal, but not economically.

Alex. Polson (p. 308), would not consider hem-

lock of much value because it sinks when put in the water. It would have some value if milled on the ground, 10, 15 or 20 cents per thousand.

This was the unbroken line of testimony of defendants' witnesses as to the value of hemlock, except the testimony of Mr. Frost, counsel for defendants (p. 402 to 409) but it is apparent that the market conditions of hemlock with which Mr. Frost had to deal were exceptional and would not apply to hemlock in Clallam County.

PLAINTIFFS' WITNESSES.

Eugene France (p. 113), says that hemlock has no value and had no value in March, 1913; has not considered it worth logging.

Graham (p. 127), says that hemlock in Clallam County in March, 1912, was perhaps worth 40 cents per thousand; that hemlock at that time had no value; timber buyers are not paying anything for hemlock.

John Rea (p. 122), would say that hemlock was of no value at all; worth perhaps 30 or 40 cents a thousand, and in the interior many buyers were not paying anything for it.

Bordeaux (p. 119), values hemlock at 50 cents

per thousand on the interior and 50 to 75 cents in the straits zone.

Duvall (p. 125), has never known of hemlock ties having any commercial value. They would only be of value to a person constructing a logging road. Hemlock about the Pysht and Hoko Rivers would be worth about 75 cents per thousand (straits zone). Hemlock on the interior timber lands would not exceed 50 cents per thousand.

The following is a tabulation taken from exhibits attached to the Bill of Complaint in each case, the correctness of which is admitted by the defendants, showing the amount of hemlock, the assessed value and the tax figures on an average tax levy of 33 mills:

CLALLAM LUMBER CO.

In 1913 (Cause No. 2905).

Hemlock—	Assessed Valuation	
704,065½ M.	\$223,222.98	
359,504 poles at 10c	35,950.40	
610,359 ties at 2c..	12,207.18	1913 tax on
	<hr/>	Hemlock \$8,955.56
	\$271,380.56	

In 1914 (Cause No. 2907—

Hemlock—	Assessed Valuation	
704,065½ M.	\$233,970.79	
359,504 poles at 10c	35,950.40	
610,359 ties at 2c..	12,207.18	1914 tax on
	<hr/>	Hemlock \$7,335.34
	\$282,128.37	

RUDDOCK & McCARTHY.

In 1913 (Cause No. 2906)—

Hemlock—	Assessed Valuation	
76,212¾ M. at 35c..	\$ 26,674.47	
25,315 poles at 10c	2,531.50	
66,072 ties at 2c.....	1,321.44	1913 tax on
	<u> </u>	Hemlock \$1,007.81
	\$ 30,527.41	

In 1914 (Cause No. 2908)—

76,212¾ M. at 40c..	\$ 30,485.10	
25,315 poles at 10c..	2,531.50	
66,072 ties at 2c....	1,321.44	1914 tax on
	<u> </u>	Hemlock \$ 892.79
	\$ 34,338.04	

Therefore, whatever disposition the court makes of this case upon other grounds, the tax upon the plaintiffs' lands involved in this suit should be diminished by the following amounts, on account of the assessment of hemlock, predicated upon values which did not exist:

Clallam Lumber Company in Cause No. 2905,	
tax for 1913.....	\$8,955.56
Clallam Lumber Company in Cause No. 2907,	
tax for 1914.....	7,335.34
Ruddock & McCarthy in Cause No. 2906, tax	
for 1913.....	1,007.81
Ruddock & McCarthy in Cause No. 2,908, tax	
for 1914.....	892.79

That the court could administer this relief to the

plaintiffs irrespective of the plaintiffs maintaining their

claim of actual fraud, as to hemlock or other classes of timber, we cite the following authorities:

Simkins A. Federal Equity Suit, p. 27:

"When jurisdiction is taken upon an alleged equity which ceases before the suit ends, or is disputed by evidence on the trial of the case, the court will administer the legal remedy. However, this rule is dependent upon the utmost good faith in setting up the equitable facts through which jurisdiction is sought. If it should appear that the complainant had no reasonable ground upon which to base the equity, the court should dismiss the bill.

In *Clarke vs. Wooster*, 119 U. S. 325, it is said that if the case was one for equitable relief the mere fact that the ground for such relief had expired, etc., would not take away jurisdiction and preclude the court from granting relief.

Union Life Ins. Co. vs. Phillips, 102 Fed. 24.

Shanewall vs. Lewis, 69 Fed. 487 (bottom of p. 491):

"For it is a well settled maxim of equity jurisprudence that where a court of equity obtains a jurisdiction for one purpose it will retain it for all purposes and render complete justice, even though, in doing so, it is necessary to establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority. The fact that the action is cognizable by a court of law does not, as a general rule, impair or divest the right of the court of equity having once obtained jurisdiction, to entertain the suit."

Puget Realty Co. vs. King County, 50 Wash. 349, 352:

"It is clear that but for the assessor's error,

appellant's property would have been assessed some \$13,000 less than it was assessed, had the assessor correctly understood the conditions. This was a mistake, honestly made, it is true, but its effect upon the appellant is just the same as it would have been had it been made dishonestly and with the purpose of defrauding him. Why, then, should it not have the same relief? We think it should."

To the same point, *Case vs. San Juan County*, 59 Wash. 222. Here the court says:

"Such a discrepancy between the actual and assessed value shows a constructive fraud."

See also *Metropolitan Building Co. vs. King County*, 63 Wash. 409, 412.

Savage vs. Pierce County, 68 Wash. 623.

This was a case of over-valuation only.

Spokane & Eastern Trust Co. vs. Spokane, 70 Wash. 48, 52.

This point was urged upon the trial court particularly in the plaintiffs' Petition to Rehear (Cause No. 2905, p. 831), but refused by the trial court upon the ground that it was "only a question of over-valuation and in any event, it is not so palpably excessive as to warrant a finding of fraud." (p. 833).

We respectfully submit that under the above authorities the court was wrong in the law, and certainly wrong in the facts where the over-valuation con-

sisted in taxing property in the one case (No. 2905) at a valuation of over \$270,000, and in the case involving the least amount, at over \$30,000, when in fact the property had no assessable value whatsoever.

XX.

ASSIGNMENTS OF ERROR 1 TO IV.

Assignment No. I.

At page 178 of the Record it appears that Thomas T. Aldwell, the general manager of the Olympic Power Company, in depreciating on the witness stand the value which he had given of the power plant to the Public Service Commission, stated that the dam in the river had gone out, inferring that it would affect the market value of the plant. He was then asked by defendants' counsel as follows:

"Q. Do you know what the general impression in Port Angeles was concerning your dam at that time?"

Objection as to the competency of this was made by the plaintiffs and overruled by the court, to which the witness answered substantially that he was told he could never make the dam stick.

The ruling was clearly error as letting in street talk to affect market value.

This is set out in Assignment No. I (Record 2905, p. 837).

Assignment No. II, page 838.

This same witness, Aldwell (Record p. 181) was shown a list of properties of Port Angeles and asked by defendants' counsel the following:

"Q. Do I understand you to say that you were willing to sell this at double the assessed value?

A. Yes, sir.

MR. PETERS: That would not be competent.

THE COURT: Objection overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed."

The witness answered that he would not have been willing to accept double the assessed value of this property on the first day of March, 1913. He was then in an optimistic frame of mind; he does not know whether he would have done so on March 1, 1914, but he would now.

This was clearly error, as set up in Assignment No. II.

The witness Lauridsen, called by the defendants (Record p. 415) produced a list of town lots in Port Angeles which he said he owned, and opposite them what he claimed to be the assessed value taken from his tax receipts, which he offered in evidence and which was accepted in evidence as Defendants' Exhibit 29, and was questioned thus by defendants' counsel:

"Q. I wish you to indicate to the court on what part of the memorandum or tabulation are the 600 lots which you would sell for their assessed value.

MR. PETERS: I do not think that is competent, what the witness will sell the property for at this time.

MR. EWING: I will limit the time to the first of March, 1914.

MR. PETERS: That is not it. What was the market value, not what he might or might not sell it for.

THE COURT: It is a declaration against interest; I will overrule the objection.

MR. PETERS: Note an exception.

THE COURT: Exception allowed."

This exhibit was admitted over plaintiffs' objection.

This was clearly error. If Aldwell or Lauridsen had been called by the plaintiffs and testified to the value of certain lots they might properly have been asked by the defendants on cross-examination whether they had not at some previous time stated that they would sell these lots for a different price to that which they then stated as impeachment. But certainly as defendants' own witnesses they cannot testify in chief as to what they would sell lots for in September, 1915, as tending to show the market value in 1913 and 1914.

This error is set out in Assignment No. III (p. 838).

While we realize, of course, that these errors could not themselves alone materially change the result

of the case, yet they should be taken into consideration in estimating the value of these witnesses' testimony, and they throw some light upon the erroneous view of the trial court in passing upon the case.

XXI.

The law found in Section 9112 of Volume III of Remington & Ballinger's Codes and Statutes of Washington, providing for the assessment of property at 50 per cent of its true and fair value in money, is a valid law and was in force from and after the 12th day of June, 1913, and applicable to the assessments both for the year 1913 and 1914.

The contrary of this was asserted by the defendants in their answer (Record 2905, p. 78). We will therefore cite the following in support of our contention:

In *Spokane & Eastern Trust Co. vs. Spokane Co.*, 70 Wash. 49, the State Court recognized the validity of the practice of counties in assessing property at less than its actual value and in that case, at sixty per cent of its value, so long as the same rule was applied uniformly to all property.

Likewise in the case of *Savage vs. Pierce Co.*, 68 Wash. 623.

As these cases were both tried before the passage of the above act they of course had no reference to

the act, but if the practice without the statute was not a violation of the State Constitution, as there held, certainly the statute enacting such practice would not be unconstitutional.

See likewise on the subject generally the following:

City of Chicago vs. Fishburn, 189 Ill. 367, 377, 378.

Railroad & Telephone Co. vs. Board of Supervisors, 85 Fed. 302, 315, 316.

Taylor vs. L. & N. R. Co., 88 Fed. 350, 364.

State vs. Birmingham So. Ry. Co., 132 Ala. 475, 481, 483.

In the above Alabama case the same question was raised as is suggested here. The Alabama Constitution provides that "all taxes levied on property in this state shall be assessed in exact proportion to the value of such property." The Alabama Legislature of 1911 passed an act as follows:

"Taxable property within this state shall be assessed, for the purposes of taxation, at sixty per cent of its fair and reasonable cash value."

It was held by the Supreme Court of Alabama to be perfectly clear that nothing expressed or implied in the language of the constitutional limitation prohibited the Legislature from fixing as a basis for taxation any percentage of the actual value of property whether greater or less than 100 per cent thereof, provided only that such rule be applied without dis-

crimination to all property of the same nature and the Court there says:

“Similar legislation under similar provisions of the constitutions of Tennessee, Nebraska and West Virginia have been held to be valid. * * *”
We believe that no court has ever taken a contrary view.”

This law providing for the assessment of property at fifty per cent of its market value was passed by the Legislature of 1913 (Laws of Washington, 1913, p. 438, Chapter 140). The Legislature adjourned March 13, 1913. (See certificate of secretary, same volume, page 700). Under the State Constitution, Article II, Section 31, it is provided that all laws except appropriation bills shall take effect ninety days after adjournment of the session at which the law was enacted, except where an emergency clause is attached.

This statute then became effective June 13, 1913. As pointed out previously herein the Board of Equalization to pass upon the assessment roll of 1912 and 1913 did not meet until August, 1913. The law therefore was effective at that time and imposed upon the Board of Equalization the duty of seeing that property was assessed in this manner.

Hunt vs. Fawcett, 8 Wash. 399.

“On that day the work of the State Board of Equalization was completed and then and not

until then did the value of property in the county for purposes of state and county taxation become fixed and certain."

In *State ex rel Thompson vs. Nichols*, 29 Wash. 157, it is held that the valuation of real property may be changed in the odd numbered years in spite of the statute providing for its assessment bienially in even numbered years. (See page 174).

Also see further authorities cited in this brief under Section XVI.

It is clear that under the Washington statute the actions of the Board of Equalization are just as much a part of the assessment of taxes as the act of the assessor in listing the lands and when the law of 1913 required properties to be assessed at fifty per cent of their value, without excluding the taxes for that year, it was certainly a direction to the assessors in the following June to follow this law. As a matter of fact the act was passed in March, 1913, though not in effect until June, but the assessor himself had plenty of notice of it before making up his tentative valuations.

XXII.

The defendants have affirmatively plead that the plaintiffs are charged with laches (Record 2905, p. 77) because it is claimed that plaintiffs paid all of the taxes levied on their lands for the years 1910, 1911

and 1912. But the plaintiffs were not aware of the fraud practiced upon them until after the payment by them of the taxes of 1912 (Record p. 691).

It is indispensable to the application of the doctrine of equitable estoppel that the parties sought to be estopped have knowledge of the truth of the material facts.

16 Cyc. 730.

11 Amer. & Eng. Enc. of Law, 433.

Marine Iron Works vs. Wiese, 148 Fed. 145, 157.

Puterbaugh vs. Wadham (Cal.), 123 Pac. 804, 807.

Fletcher vs. Kidd (Cal), 127 Pac. 71.

Globe Navigation Co. vs. Maryland Casualty Co., 39 Wash. 299, 307.

Bardsley vs. Sternberg, 17 Wash. 243, 247.

Pence vs. Langdon, 99 U. S. 578. This was a suit for rescission and recovery of purchase price of mining shares in which the defendant claimed plaintiff had knowledge of defendant's fraud. The court defines acquiescence thus:

"Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import this foundation for such action. One cannot waive or acquiesce in a wrong while ignorant that it has been committed. Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do."

Brant vs. Virginia etc. Co., 93 U. S. 326, 335.

For the application of the doctrine of equitable estoppel, "There must generally be some intended deception in the conduct or declaration of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud by which another has been misled to his injury."

It is essential as an element of equitable estoppel that the person invoking it has been influenced and misled to his injury by, and relied upon the representations or conduct of the persons sought to be estopped.

16 Cyc. 734.

11 Amer. & Eng. Encyc. of Law 436.

Atwood vs. Smith, 64 Wash. 470, 479.

Madson vs. Spokane, 40 Wash. 414, 417.

Mace vs. Duffy, 39 Wash. 597.

Shoufe vs. Griffiths, 4 Wash. 161, 166.

Thompson vs. S. F. National Bank, 160 U. S. 231, 244.

XXIII.

To summarize the relief that we urge should be granted the plaintiffs in this case we respectfully urge the following:

First: The assessments for the years 1913 and 1914 as against the plaintiffs were both based upon actual fraud, or if not, then upon such arbitrary method and unequal assessment as to constitute constructive fraud. In either case the assessment and consequent taxation of these lands was wholly void.

The question would then be raised as to what taxes the plaintiffs ought to pay:

We contend that the market value, or true value in money, of all the interior lands on March 1, 1913, and March 1, 1914, did not exceed the sum of \$1.00 per thousand for fir, spruce and cedar; that we should not have been assessed at over 50 per cent of this sum, both as a matter of positive statute and as a matter of the declared practice of Clallam County assessors with other property.

Turning to Exhibit G attached to the Bill of Complaint in Cause No. 2907, page 28, it will be seen that the total amount of timber of all kinds assessed against the plaintiff Clallam Lumber Company was 2,551,080,000 feet. From the same exhibit (pages 46, 47 and 48) we aggregate the hemlock as 704,065,500 feet. Deducting this from the above total gives for fir, spruce and cedar on the lands of the Clallam Lumber Company 1,847,014,500 feet. Assessing this at 50 cents per thousand gives an assessed value of \$923,507.25 for fir, spruce and cedar.

While confidently urging that the hemlock, for the reasons hereinbefore set out, should not be assessed at all, yet assuming it to have a market value of even 50 cents a thousand, and assessing it at one-half this, 25 cents a thousand, we should have the assessable

value of all hemlock timber of this plaintiff, \$176,016.25.

Adding this to the above assessed valuation of fir, spruce and cedar, we have the total assessment of the two classes of timber at \$1,099,523.50.

Adding to this the total of hemlock poles and hemlock ties (Exhibit G, page 48, Cause 2907) assessed at 10 cents and 2 cents apiece respectively (Cause 2907, p. 11), \$48,157.58, we have for the Clallam Lumber Company's timber of all kinds, including hemlock poles and ties, an assessable value of \$1,147,681.08.

This property was actually assessed for the year 1913 at \$1,711,505 (Record 2905, p. 12), and for the year 1914 it was assessed at \$1,725,015 (Record 2907, p. 12).

Pursuing the same discussion as to the Ruddock and McCarthy lands, in Causes 2906 and 2908, we have the following (Record 2908, p. 29). Exhibit B shows the total amount of all classes of timber as 714,929,750 feet. Deducting from this total the amount of hemlock, 76,212,750 feet, leaves 638,717,000 feet of fir, spruce and cedar. Estimating this at \$1.00 per thousand for the market value, or 50 cents a thousand assessable value, gives \$319,358.50.

Taking the hemlock at 50 cents market value, or 25 cents assessable value, per thousand upon the above

run, we have \$19,053, or a total of \$338,411.50.

Taking the total of hemlock poles at 10 cents and ties at 2 cents each, on these lands, gives an assessment for ties and poles of \$3,852.94, or a total assessment for the Ruddock and McCarthy lands of \$342,264.46.

These properties were assessed for the year 1913 at \$479,990 (Record 2906, p. 8), and for the year 1914 at \$561,395 (Record 2908, p. 6).

In obtaining the data for these estimates we have referred to Cause 2907, rather than 2905, and to Cause 2908, rather than 2906, because as stated in the Record there were inaccuracies of computation in the original bills which were corrected in the amended bills, and these corrections carried forward in the subsequent cases which in effect adopted the text of the amended bills.

It is evident that as our tenders were based upon a much higher estimate, in order to be safe, we have offered to do ample equity in that matter.

Second: Should this Court refuse to grant the remedy above outlined, but should exclude hemlock from assessment, such relief can be readily framed from the data above given.

Third: But should this Court refuse the above, but conclude that we are entitled at all events to an assessment of no higher a rate in 1914 than 1913, then the assessment upon the Clallam Lumber Company's lands in the year 1914 (Cause 2907) should be reduced by the sum of \$194,774.20; and the assessment of the Ruddock and McCarthy lands for the year 1914 (Cause 2908) should be reduced by the sum of \$81,405. (See discussion under point XI in brief, pages 163 et seq.)

We take it that the practical method of working out this relief in this Court would be, substantially, decrees adjudging that the assessments as made and the taxes as levied were void, and that the lands should be assessed by Clallam County in the manner and figures hereinabove pointed out, and that the taxes should so be extended upon the rolls, crediting the plaintiffs with the amounts which they have paid, in the one case, and which they have tendered and are to pay in the other.

Respectfully submitted,

PETERS & POWELL,
EARLE & STEINERT,
Attorneys for Appellants.

BUTTERFIELD & KEENEY, of Counsel.

R15W

R14W

R13W

R12W

R11W

R10W

R9W

T 33 N

T 32 N

T 31 N

T 30 N

T 29 N

T 28 N

MAKAN INDIAN RES.

*Land from valuations sheet 1912 assessment**1914**Chillicothe land school and other land
Hillside - Chillicothe land school*

#1

90¢
40¢

#2

70¢
80¢
40¢

#5

40¢
20¢
50¢
25¢

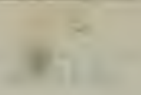
#3

70¢
30¢
80¢
30¢

#6

60¢
70¢
70¢
30¢

#4



3

IN THE
**United States Circuit Court
of Appeals**
FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION.

Brief of Appellees

FRANK L. PLUMMER,
Prosecuting Attorney.

JOHN E. FROST,
EDWIN C. EWING,
RICHARD SAXE JONES,
C. F. RIDDELL,

Attorneys for Appellees
Seattle, Wash.

Filed

FEB 19 1917

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Seattle, Wash.

STATEMENT OF THE CASE

These cases are appealed from decrees of the United States District Court for the Western District of Washington, Northern Division, which dismissed as without equity bills of complaint to enjoin the collection of a portion of the taxes for the years 1913 and 1914 levied by Clallam County upon timber lands of the appellants. The facts and the principles of law applicable thereto are, in the main, the usual ones involved in the suit to restrain the collection of a tax for alleged fraudulent conduct upon the part of the assessing officers. No novel principles of law are urged upon this court, nor any novel applications of established principles. Succintly stated, the charge in the bills of complaint is, that all the inhabitants of Clallam County are members of a conspiracy to defraud the appellants by assessing the timber lands of appellants and other owners of timber lands in the interior of Clallam County at eighty per cent of their true and fair value in money, while the personal property in Clallam County, the farm lands, the real estate in Port Angeles and the timber lands known as the "Straits" timber all are assessed at from ten to forty-five per cent of their value; and that the assessments upon the lands of the appellants

and upon all the other property in Clallam County are made in the execution of that fraudulent conspiracy. The main geographical features of the County are alleged in the bills and substantially admitted in the answers. In the absence of such pleading, however, the court would judicially notice that Clallam County is a long, narrow county, bordered on the East and South by Jefferson County, on the West by the Pacific Ocean and on the North by the Straits of Juan de Fuca. The eastern end of the county (such of it as is settled) is agricultural, and contains but one town, Sequim, with a population of approximately 450. The only other town is Port Angeles with about 4400 people, which lies on the Straits, about one-third of the distance from the eastern line of the county. It is to be noted that Clallam is a sparsely populated county, a large portion of it being a National Forest Reserve, consequently not upon the tax rolls. It contains 529,920 acres of taxable land, of which but 18,072 acres are cleared and improved. (Record, page 284). The remainder is either timbered land or logged-off land. If a rule be laid North and South along the West line of Range 8, which runs a few miles West of Port Angeles, all of the county West of that line will, roughly, comprise the timber belt involved in this suit, plaintiffs apparently conceding that the timbered lands in the eastern portion of the county

are fully and fairly assessed. Appellants are pleased to divide this timber belt into the "Straits" timber, so-called, and the "Interior" timber. All co-called "Straits" timber is included within the zone marked No. 1 on the map appended to appellants' brief and is described in paragraph 7 of the bill of complaint in cause number 2905. All the rest of the timber west of Range 8 is referred to by the appellants as the "Interior" timber. The charge in effect is that the so-called "Straits" timber has a market value of \$2.00 per thousand stumpage and, being assessed at ninety cents per thousand is, therefore, given a forty-five per cent assessment. Appellants contend that the bulk of their "Interior" timber is worth but half as much, namely: \$1.00 per thousand feet stumpage, and that being assessed at eighty cents per thousand, it bears an eighty per cent assessment.

The total assessment of the county in 1914 was \$14,576,197, of which \$10,062,205 was the assessment on the timber lands (Exhibit 21). According to this exhibit city real estate was assessed at \$2,114,957. All unimproved land except timber land was assessed at \$901,475, and all improved land, together with the improvements thereon, at \$746,305.

Reducing these figures to round numbers the assessment is analyzed as follows:

Total County assesment for 1914.....	\$14,600,000	
Assesment of City lots...	\$2,100,000	
Assessment of wild land	900,000	
Assessment of improved land	750,000	
<hr/>		
Total assessment of all real estate except timber	\$3,750,000	
Assessment of timber land	10,000,000	
<hr/>		
Total assessment of all real estate	\$13,750,000	13,750,000
<hr/>		
All other property approximately.....	\$850,000	

The bills contain much language *in terrorem* attacking the assessment of goods, wares and merchandise and other personal properties without specifying them. The only personal property the assessment of which was attacked by evidence was the assessment of the banks, of the shingle mills, and of the mill of the Puget Sound Mills & Timber Company and the plant of the Olympic Power Company. No attack has been made upon the assessment of live stock or animals of any kind, implements, tools, vehicles, merchandise, stocks of goods, automobiles, or any other form of personal property save those mentioned. The property of the Puget Sound Mills & Timber Company, according to ap-

pellants' witness Pollock (Record, page 680), was valued at \$655,000. According to the same witness the total valuation of all the shingle mills in the county was about \$55,000. (Appellants' Brief, page 173). The total valuation of the banks in Clallam County is \$85,000. (Appellants' Brief, page 174). In the judgment, therefore, of the witnesses for the appellants, personal property with an actual value of \$795,000 would, to a certain extent, be under-assessed. At a fifty per cent valuation this property should appear on the assessment rolls at \$397,500, if appellants are correct. The banks are assessed at \$10,200. (Record, page 785) The shingle mills are assessed at \$17,140. (Appellants' Brief, page 173), and the property of the Puget Sound Mills & Timber Company at \$83,435, or a total of approximately \$111,000. If the court should sustain the entire contention of the appellants as to the assessment of personal property, there would be added to an assessment of over fourteen and a half million dollars but \$286,500. This would make a difference of about 2%. *De minimis lex non curat.*

These items of personal property were not in fact under-assessed, as will be shown later.

We have left, therefore, the assessment of the real estate which covers approximately ninety-five per cent of the taxable property in the county. The

unimproved land known as "wild land" is valued at approximately nine hundred thousand dollars. No testimony concerning the valuation of that land was introduced by either side. It is consequently eliminated. The assessment of farm lands and of city lots was attacked. The assessment of timber in the so-called "straits" zone was also attacked. Just as real property, carrying 95 per cent in value of the total assessment, is the most important factor in it, so the timber lands are the most important part of the real estate assessment. The assessment of the timber lands constitutes five-sevenths of the entire assessment of the county, and if the assessment of the timber has been fairly and honestly made as between the owners of the "straits" timber and of the "interior" timber, then the most important and really the decisive factor in the case shall have been definitely established. This is true, because the uniform testimony of practically every witness in the case, for appellants as well as for the county, establishes the market value of the timber in the "straits" zone as two dollars per thousand feet stumpage. It is assessed at ninety cents per thousand feet, which is a forty-five per cent assessment.

If therefore we find that the "interior" timber is honestly and fairly assessed in the same proportion as the "straits" timber, then we have estab-

lished five-sevenths of the entire assessment as having been fairly and honestly made.

The class of property next in importance is city lots which are assessed at over two million dollars, or more than one-seventh of the total assessment. If this property shall also be found to have been fairly and honestly assessed, then, with the timber lands, six-sevenths of the assessment will have been disposed of.

The third class of real estate left to be considered is the farm lands. Appellants have not discussed a single sale of real estate, with examples of which the evidence is replete. We shall present as briefly as possible every sale of city lots or acreage which has been produced for this record. The assessment of the property so sold will be compared with it, and after the court shall have considered the actual sales of the property side by side with the assessment, it will be understood why appellants neglected to perform this service.

We will finally analyze the testimony relating to the assessment of personal property and property of the Olympic Power Company.

Examination of those phases of the cases which concern the details of the assessment of the various classes of property referred to will demonstrate the absurdity of the appellants' charges of fraud and conspiracy.

In the year 1908, for the purpose of securing an accurate basis for the valuation of property for purposes of taxation, Clallam County caused to be made a cruise of all of the timber lands in the county. This cruise was not completed until the year 1914, but in its partially completed state it was used by the assessor in making his assessment of the timber lands of the county for the year 1912, upon which the assessment for the year 1913 was based, and also in making his assessment for the year 1914. This cruise became a part of the county records and is in evidence in these cases as Defendants' Exhibits 19 and 20. The county also made a survey of all of the other lands except town lots, which became a part of the county records and is in evidence in this case, as Acreage Grade Books, Defendants' Exhibits 22 and 23. The timber cruise is so minute, detailed, painstaking and careful that it is virtually a tree count of the timber lands of the county. It shows in detail all of the elements or factors which enter into the value of timber lands. As a result of the accurate information thus made available and the careful valuation of timber lands based upon that information, the taxes upon timber lands in the county were somewhat increased over former years.

In attacking the assessments for the years 1913 and 1914, the appellants had open to them two

methods of assault:—The first was to pay under protest the amount of the taxes assessed against them, and then sue to recover such excess as they might be able to prove unlawful; the second and easier method, because it did not involve the expenditure of so large an amount of money, was to pay into court the amount of a tax for each year based upon an assessment alleged by them to be a proper valuation of their timber lands, and to enjoin the collection of any amounts in excess of the sum so tendered. They chose the latter method.

At the outset of these cases they were confronted by two obstacles. The first was the official timber cruise, which has eliminated every possibility of controversy over the valuation of timber lands except the one element, market value, an element ultimately determined by taking into consideration all of the other factors shown by the cruise.

This cruise was made by Lou C. Duvall, a man whom appellants used as a witness in the lower court. The correctness and accuracy of this cruise, and its acceptance, are matters of record. One witness (Rixon) was asked to give a description of the general physical contours of the land in question, when the following took place:

MR. FROST. If Your Honor pleases, we desire to interpose another objection. I don't want to be

technical, but these plaintiffs have pleaded a county cruise. They have estopped themselves from in any way denying or assailing the county cruise. They are bound by it; because they alleged affirmatively in their own pleadings that the county cruise shows the quantity and character of their timber.

THE COURT. You don't object to the county cruise?

MR. PETERS. No, your Honor. (Record, page 102).

The witness (Rixon) being interrogated as to the character of the timber in these zones, said: "The character and quality of the timber in Zone 1 varies considerably." At this point in the testimony the following occurred:

MR. FROST. I would like to reiterate that counsel has admitted in open court that they accept and adopt, and do not deny the county cruise.

MR. PETERS. Yes, I think we are both bound by that.

(Record, page 107).

The second obstacle was the fact that courts of equity, either state or federal, are not integral parts of the taxation system of the state, it being only in the exceptional cases of fraud or the avowed adoption of palpably wrong principles of valuation by

the assessing and equalizing officers that the courts of equity will interfere in matters of taxation.

“The law is thoroughly settled that in such cases the courts have nothing whatever to do ‘with anything less than fraud, or a clear adoption of a fundamentally wrong principle’ in the making of the assessment and levy.”

Washington Waterpower Co. vs. Kootenai County, 210 Fed. 867 (868).

“The levy of taxes is not a judicial function. Its exercise, by the constitutions of all the states, and by the theory of our English origin, is exclusively legislative.”

State Railroad Tax Cases, 92 U. S. 575; 23 Ed. 663 (674).

“The determination of the value to be fixed on property liable to be assessed ‘is not, in the absence of fraud, subject to the supervision of the judicial department of the state.’ *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276 * * *”

Burton Stock Car Co. vs. Traeger, 187 Ill. 9; 58 N. E. 418.

“In the absence of any evidence or sufficient evidence to show fraudulent, arbitrary, capricious or collusive conduct on the part of the assessor, the valuations of the assessor are final and cannot be disturbed.”

Hammond Lumber Co. vs. Cowlitz County, 84 Wash, 462 (465).

“It was early held by this court in *Andrews*

vs. King County, 1 Wash. 46; 23 Pac. 409; 22 Am. St. 136, that courts of equity will not interfere to correct errors in judgment as to valuation, as 'value is a matter of opinion, and when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred.' "

Collins vs. King County, 80 Wash. 251 (253).

"For excessive assessments, unless fraud is established by the proof or may be presumed from the circumstances, equity furnishes no relief and the remedy must be such as the statute has given."

Templeton vs. Pierce County, 25 Wash. 377 (378).

"It is well settled that a suit to enjoin the collection of a tax will not be entertained in courts of equity—at least, in those of the United States—in which the sole ground set forth in the bill is that the tax is illegal or excessive."

Taylor vs. Louisville & N. R. Co., 88 Fed. 357 (374).

"If property has been assessed higher than it should have been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error, and can only relieve against

fraud. *Keokuk & Hamilton Bridge Co. vs. People*, 145 Ill. 596; 34 N. E. 482.”

People ex rel. Thompson vs. Bourne, 89 N. E. 690 (691); 242 Ill. 61.

“Mere differences of opinion between the assessing officers and the owner of the property or between the courts and the assessing officers will not give a court of equity jurisdiction to declare fraudulent even what such court thinks is an excessive valuation.”

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (956).

“The constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature. Hence the courts have no power to fix the valuation of property for taxation.”

Burton Stock Car Co. vs. Traeger, 187 Ill. 9; 58 N. E. 418 (419).

By reason of the very particularity with which the elements or factors entering into the valuation of the timber lands are shown in the cruise, the first obstacle was rendered insurmountable. As a basis for their suits, therefore, plaintiffs had recourse to an expedient by which they deemed it possible to produce an artificial foundation for these suits, taking advantage of certain peculiar and abnormal

conditions of the real estate market obtaining in Port Angeles during the latter part of the year 1912 and the early part of the year 1913.

At the time the assessment of property in Clallam County for the year 1912 was made, the laws of Washington provided that all real property in the state subject to taxation should be listed and assessed biennially, on every even numbered year, with reference to its value on the first day of March preceding the assessment. (Remington & Ballinger's Code, Vol. 2, Sec. 9101). It was also provided that the assessors should list all real property according to the largest legal subdivision, as near as practicable. (Remington & Ballinger's Code, Vol. 2, Sec. 9113). It was further provided that all property should be assessed at its true and fair value in money, and that the true cash value of property should be that value at which the property would be taken in payment of a just debt from a solvent debtor, also, that in assessing any tract or lot of real property, the value of the land exclusive of improvements should be determined, and the value of all improvements and structures thereon. (Rem. & Bal. Code, Vol. 2, Sec. 9112).

The specific provisions of this latter statute have never been adhered to by assessors of the State of Washington, and they have uniformly assessed

property at less than its true and fair value in money. This practice was universal in the State, and had, at least inferentially, judicial sanction, the courts holding that the principal requirement of the law to be observed by the assessors in this regard was the constitutional requirement of uniformity.

In 1913, Sec. 9112 Rem. & Bal. Code was amended so as to provide that all property should be assessed at not to exceed fifty per cent of its true and fair value in money. (Laws of Washington, 1913, page 438, Sec. 1). The assessment of the property of Clallam County for the year 1912 was made upon the basis of approximately fifty-two per cent of actual value, under the old statute, and the assessment of the same property for 1914 was made upon the basis of fifty per cent, in strict accordance with the letter of the amendatory statute.

Between the time of the assessment of the year 1912 and the assessment of 1914, however, there transpired the peculiar and abnormal conditions to which we have previously adverted, which was confined principally to the town of Port Angeles. That town and its citizens, during the period from the early part of December, 1912, to the middle of the year 1913, had been made the

hapless victims of a real estate exploitation conceived and engineered by Seattle real estate operators, which produced a purely artificial and highly abnormal condition in the real estate market. The details and methods of operation of this boom are set forth in the testimony of the witness Ware at pages 142-a and 142-b of the record; in the testimony of the witness Aldwell, page 179 of the record; in the testimony of the witness Lauridsen, pages 422, 430 to 433 of the record; in the testimony of the witness Haggith, pages 439 to 440 of the record; and in the testimony of the witness Levy, pages 593 and 594 of the record. The actual character and the results of this boom as they affected, not realty *values*, but realty prices, in Port Angeles, are analyzed elsewhere in this brief, but the boom itself, and the artificial and inflammatory conditions produced by it and accompanying it were eagerly seized upon by the appellants as affording evidence of a disparity between the actual and assessed valuations of Port Angeles real estate sufficient to make a showing in court.

By reason of the very particularity with which the elements or factors entering into the market value of timber lands were shown in the timber cruise of the county, and the consequent impossibil-

ity of successfully maintaining their suits upon charges disputing the accuracy of the cruise, it became necessary for the plaintiffs, in order to obtain and hold a standing in court, to set up in their pleadings and to establish in their proof the existence of some one of the exceptional states of fact or conditions which under the decisions and recognized rules of equity will permit the intervention of equity courts in matters of taxation. One of the most familiar grounds of equity jurisdiction is fraud, much favored by litigants seeking the jurisdiction of equity courts in matters of taxation, and accordingly the plaintiffs based their bills of complaint upon this ground and alleged actual fraud, not constructive, upon the part of the assessing and equalizing officers of Clallam County.

This charge is made in such definite and specific form in the bills that one of the judges of the District Court based his decision denying the defendants' motion to dismiss squarely upon the allegations of fraud in the bills:

“The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and cooperation with relation to the

excessive valuation and assessment of the lands of the complainant."

(Judge Neterer's memorandum decision on motion to dismiss, Record, page 48).

The appellants, therefore, through their counsel, Earle & Steinert (Record, page 246), some time prior to bringing these suits, procured one E. H. Grasty to go to Port Angeles to "ferret out," to use his own expression (Record, page 218), such conditions in Port Angeles as would afford an apparent basis for the allegations later made in the bills of complaint in the actions brought by the appellants. It is principally upon the operations of this man that these cases are founded.

Notwithstanding eighteen assignments of error alleged in numerical sequence and twenty-three subdivisions of argument, the appellants' brief follows no logical order of referring argument to assignments of error; and because an attempt to follow appellants' argument, as presented in their brief, would merely tend to make confusion worse confounded, we prefer to make to the court a presentation of the appellees' theory of the cases, founded upon facts established in the record rather than upon the fictions assumed throughout the course of the appellants' arguments, reserving extended comment upon the plaintiffs' argument until

the close of this brief. We will, therefore, divide our argument according to the following analysis:

I.

The Timber Assessment.

- (a) Assessment by zones.
- (b) Comparative value of "Straits" and "Interior" timber.
- (c) Railroads.
- (d) Hemlock.

II.

Real Estate Assessment.

- (a) Farms and Sequim lots.
- (b) Port Angeles lots.

III.

Personal Property Assessment.

IV.

Assessment of Olympic Power Co.

V.

The Alleged Conspiracy.

VI.

Answer to Appellants' Contentions.

THE TIMBER ASSESSMENT.

Appellants first assail the assessments of 1913. The tax rolls of that year show a total of 529,280 acres of taxable land in the county, of which 370,191 acres were timber lands, and but 15,300 acres cultivated or improved lands, the remainder, 143,789

acres, being unimproved or "wild" lands, consisting of logged-off lands and lands not valuable for standing timber. The total assessment of the county was \$12,354,760, of which \$8,902,850, or approximately three-fourths, fell upon timber lands. (Defts. Ex. 21; Record, p. 284.) This is a condition which constitutes the assessment of timber lands the most important factor in the comparison of the assessments of appellants' with that of other property in the county. Then, too, the weight of authority holds that the taxpayer may not be heard to complain if his holdings are assessed ratably with other *like* property:

"If property, even if overvalued, is assessed in the same proportion as other *like* property within the jurisdiction of the assessing officer, and the system of valuation adopted operates equally on all other property, the constitutional provision as to uniformity of taxation is complied with."

Edison Elec. Ill. Co. vs. Spokane County, 22 Wash. 168.

"It was no ground for relief against excessive valuation of property that the assessor had merely overvalued the property, if it appeared that his action was not arbitrary or capricious and the property had been assessed in the same proportion as other *like* property within the jurisdiction of the assessing officer."

Templeton vs. Pierce County, 25 Wash. 377, quoted and approved in *Henderson vs.*

Pierce County, 37 Wash. 201, and again approved in *Hillman's etc. vs. Snohomish County*, 87 Wash. 58.

To enable the assessor and equalizing board to correctly appraise the taxable lands of the county, a cruise or survey of the timber lands was made (Defendants' Exhibits 19 and 20), a work which is monumental and which discloses all of the facts essential to an accurate appraisement. In fact, as we have previously stated, it amounts to a tree count of the timber standing upon each ten acres, giving in detail the amount in feet, board measure, the character and grade of each variety of timber, and showing the physical characteristics of the land upon which it stands—even to the exact elevation above sea level.

ASSESSMENT BY ZONES.

It is common knowledge, and a fact shown by the testimony of all of the expert timber witnesses testifying either on behalf of appellants or appellees, that the value of timber depends upon several factors, chief among which are the thickness of the stand, the character, grades and quality of the timber, the physical characteristics of the ground, and the ease or difficulty of logging, as well as its availability or remoteness. Considering these factors, the

assessor established "zones" or districts, placing different valuations upon the lands in each district.

"I exercised my judgment in establishing all these zones. In making the zones I took in the the surface of the country, the kind of timber and other characteristics that entered into the general topography of the country; everything concerning its physical character." (Testimony of John Hallahan, County Assessor, Record, p. 509.)

That such a distinction is not only proper, but necessary, is evidenced by the fact that appellants in their complaint plead a distinction and a difference in the valuation of timber lands in one locality as compared with their lands in other localities. It is clear that the assessor must make a distinction in his own mind, and having made it, it is a matter of no moment whether he retains it there or takes a ruler and indicates upon a map the lines separating the limits within which he recognizes, and must, if he is to make a fair assessment, recognize, a difference in valuation.

The creation of zones is a common practice in the State of Washington and has the approval of its Supreme Court in *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, and *Simpson Logging Co. vs. Chehalis County*, 80 Wash. 425.

Appellants cite *Hersey vs. Board of Supervisors*, 37 Wis. 75. This case was relied upon by the tim-

ber owners in *Doty Lumber & Shingle Co. vs. Lewis County, supra*, and after receiving careful consideration by the Washington Supreme Court in so far as it affected the establishment of zones, was disapproved. An examination of the *Hersey* case will reveal the fact that it did not decide the point contended for by counsel in this case, the decision turning upon the failure of the assessor to comply with certain requirements of the Wisconsin statute. Then, too, it was decided in 1873, at a time when the zone system was a novelty in America.

The creation of zones is a European conception, having its original basis in fixing rates and fares of public service corporations. Its fairness having commended it to American common sense, it was adopted in this country and has been made use of in establishing fares of transportation companies, in regulating freight and other rates, and by the United States Post Office Department in the matter of parcels post; it is universally used in making special assessments for local improvements, and is generally applied to the assessment of property like timber lands, coal lands, etc.

During the trial of these cases the lower court commented upon this phase of the issues as follows:

“I am willing to assert that it seems perfectly reasonable to me that zones should be

established, I would not have the assessor go out and look at every tree and every limb on every tree. There has got to be a line drawn somewhere, so as to establish legal sub-divisions, or zones. It is all a matter of establishing zones some time, whether ten acres, or a million acres for them. It appears reasonable to me that zones should be established. But if counsel should make out that it was so arbitrary as to constitute constructive fraud he should have an opportunity to do it." (Record, p. 507.)

The memorandum decision of the trial court adverts to this phase of counsel's argument in a way that effectually disposes of it:

"While in one sense it may be said that the boundaries of the zones were arbitrarily fixed, in that a tree immediately upon one side of the boundary could not be said to be more valuable than one immediately upon the other, yet in principle it is not more arbitrary than to assess a man's farm at an even value per acre, disregarding possible differences therein. Plaintiffs' witnesses testified that the Merrill & Ring timber in the coast zone was worth twice as much as plaintiffs' in the two interior zones. This would indicate that there was, to their minds, such a difference as would warrant zone making. What the bounds of the zones should be, how large they should be made and the values to be given the timber in each would be matters of opinion.

I find that the creation of these zones was not unreasonably arbitrary.

C. B. & Q. Ry. Co. vs. Babcock, 204 U. S. 585;
Doty Lbr. & Shingle Co. vs. Lewis County, 60
Wash. 428;

Simpson Logging Co. vs. Chehalis County, 80
Wash. 245, at 248."

The determination of the dividing lines separating the groups of timber lands of different values must be made by the assessor, and his judgment thereon is conclusive, unless it is clearly shown by positive testimony to have been governed by fraud or caprice, and in this case there is not one scintilla of evidence tending to show that the creation of these zones was not necessary and proper. As a matter of fact an examination of the topographical map prepared by appellants' witness Rixon, introduced in evidence as "Plaintiffs' Exhibit B" (Record, p. 111), largely sustains the sound judgment of the assessor.

COMPARATIVE VALUE OF "STRAITS" AND "INTERIOR" TIMBER.

The attention of the court has been heretofore directed to the fact that Clallam is an undeveloped county, consisting chiefly of wild and timbered lands. In considering the assessments in these cases it should be borne in mind that it is the land, and not the timber, which bears the assessment, the amount, character and quality of the timber being, of course, one of the principle factors to be considered in ascertaining the value of a given tract of land. In making comparisons between their own holdings and those of other timber owners, appellants have confined their testimony to lands sit-

uated in the western half of Clallam County, thus tacitly, at least, admitting that there has been no discrimination so far as timber lands in the eastern portion of the county are concerned. Appellants have alleged (Record, p. 17) that upon the Straits of Fuca and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber; that this "Straits" timber, so-called, lies within the zone described in paragraph 7 of their complaint (which is Zone No. 1, as shown upon the plat attached to their brief), and that it is worth at least twice the true and fair value of that of appellants situated in the interior. That this contention has utterly failed will be amply sustained by an examination of the evidence adduced at the trial of the case.

The first witness on behalf of appellants, Theodore L. Rixon, scarcely qualified as an expert in timber values. He admitted that he had never engaged in the logging business or in dealing in timber or timber lands. (Record, pp. 108 and 109.) Being asked if he knew the value on March 1st, 1913, of the timber in Zone No. 1, he testified:

"Well, I do not know whether I can say—I do not know just exactly the price of logs in 1913. * * * The only way to arrive at the value of that timber would be what it would cost to log and what you would get for the

logs when they are put in the water, both. * * *
If I had the log values I could figure what their
actual worth was," etc.

The witness also testified (Record, p. 109), that so far as "booming" the logs was concerned, there would be the same difficulties for the "straits" timber as for the timber in the interior, so that that element in his judgment would make no difference in their value; that his valuations were based upon what logs would grade (Record, p. 110), and what logs would be worth in the market, "outside of the cost of hauling them in, or towage, or anything like that."

The witness plainly showed not only a lack of qualification as an expert, but clearly demonstrated the fact that he was not even endeavoring to testify to the value of standing timber, but was endeavoring to arrive at a log value based upon the prices of logs in the market at that time. It is so apparent that it is scarcely worthy of comment that the market value of lands cannot be measured by the price of logs which have been cut and placed in the market at any particular time. Logs are a perishable commodity—timber lands an investment.

Appellants' next witness, Eugene France, was undoubtedly qualified as an expert to testify to the value of timber lands, had he possessed the infor-

mation upon the facts essential to an honest judgment in these cases. Asked as to the value of timber in Zone No. 1, he said (Record, p. 113):

“Well, that timber that was handiest to the water and to the straits, it might be possible by logging to get \$2.00 a thousand for it. * * * Well, I am not acquainted with the conditions in that part of the country enough to say positively; but I would say that two dollars a thousand would have been a good price for it.”

On cross-examination (Record, p. 114) he says that he did not make a thorough examination, but passed through on the roads that were cut through the timber, and walked out in the timber in different places, but did not attempt to cruise it in different sections—they didn’t have time; that he did not examine detailed cruises showing the quantity and quality of the timber. In other words, his judgment was rather an “off-hand opinion.” On further cross-examination, questioned by Mr. Frost:

“Q. (Mr. Frost.) Mr. France, would you put such observations as you have made, such investigations as you have made recently, and in the past concerning this matter up up against a complete, competent and reliable cruise?

A. Well, not if it were competent, complete and reliable. I would not; but I might investigate to see whether such was the fact or not.” (Record, p. 115.)

He could not identify any sections he went into. (Record, p. 116.) He admitted that as a matter of

fact he simply traveled over the road from Sappho to Clallam and back again in an automobile. (Record, p. 117.)

Thomas Bordeaux, the next witness for appellants, was conceded by appellees to be thoroughly qualified as an expert. Asked on cross-examination how extensive were his investigations and examination of the Lacey timber, he answered (Record, p. 119):

“A. Not very much, just merely going through the timber, following the county road, the wagon road.

Q. In other words, you went down through that country in an automobile and back, did you not?

A. Yes, sir.

Q. That was about all you looked at?

A. Yes, sir.

Q. That was the extent of your examination?

A. Yes, sir.

Q. And then you rode over the county road north to Clallam Bay?

A. Yes, sir.

Q. And back? (Record, p. 120.)

A. Yes, sir; we went to Forks Prairie from Clallam Bay, and then from Forks Prairie to Sol Duc Hot Springs.”

Then again:

“Q. And you did not go into the timber of the plaintiffs, Ruddock and McCarthy, at all?

A. No, sir; did not go down there.

Q. Have you made a careful and thorough examination of the cruise of timber with ref-

erence to the quantity and quality and the physical characteristics of it?

A. No, sir.

Q. You never have examined any cruise at all?

A. No.

Q. (Record, p. 121.) In other words, you are testifying upon the general impression that you got from riding along the public highway?

A. Yes, sir. * * *

Q. You don't know anything about the timber conditions and logging conditions in Clallam County except what you discovered on that occasion?

A. No, sir."

The next witness for appellants, John A. Rea, is also singularly unqualified as a timber expert. He accompanied appellants' witnesses Bordeaux and Draham (Record, p. 122); went through the timber on the wagon road. Is not prepared to compare the quality of appellants' timber with that in Zone 1, because he was not in the timber on the straits, and only knows of it by hearsay and common report. Admits that he would not buy the timber upon the examination he made (Record, p. 123); admits that he does not know anything about what the relative cost of logging of plaintiffs' timber would be; admits that he does not know what the stand of timber in there is, or what it grades, and says: "That has nothing to do with my notion." Admits that he does not know what the relative cost of logging the timber in the interior to the straits timber would be.

As a matter of fact, this witness displayed such a lack of knowledge concerning the subject, and particularly the timber in controversy, as to make his testimony scarcely worthy of consideration.

Appellants' witness Earl C. Duvall had charge of the cruising of the timber lands in the west end of Clallam County in 1911, 1912 and a portion of 1913. (Record, p. 124.) He had full charge of the cruise in the field, and full power to employ and discharge his assistants. He testified that the cruise was a fair, honest and conscientious cruise—the same cruise he would make for a corporation or an individual,—and that to the best of his judgment and of the men who did the work, the quality of the timber, the physical characteristics of the ground, the logging conditions and other things that are explained in detail until the cruise are recorded truthfully and accurately (Record, p. 126); concerning the value of timber, he said: “It is purely a speculative proposition away from transportation.” (Record, p. 125.)

Mark H. Draham, erroneously called “Graham” in the record, was admittedly qualified as a timber expert. He passed through the timber with Mr. Bordeaux and Mr. France—they didn't make a very thorough examination. (Record, p. 126.) As to its general character, it is a very good timber tract;

he did not examine very thoroughly the character of the land as a logging proposition; and as to whether it was broken or level; they only passed through the lands on the Hoko and Pysht on the county road; they made about the same examination of them as of the interior lands. The witness further testified as follows:

“Q. What, in your judgment, is a comparative—what is the comparison of the character and quality in the first place, and then of the value, if you know, of the lands on the straits, the Hoko and the Pysht lands, that you observed, and the interior lands of the plaintiffs?

A. (Record, p. 127.) I do not hardly think I am competent to answer that question. A person passing along the county road necessarily gets very little knowledge of a country. You do not see very far into the forests, and the only thing that you know is what you see; * * *

Q. What would be your judgment as to the difference in value as to the two, by reason of the character and quality such as you had occasion to observe it, and by reason of its location, the two classes of timber, that upon the straits and that in the interior?

A. That is a pretty hard question for a person to answer with the limited opportunity to examine the timber that we had,” etc.

On cross-examination (Record, p. 128) the witness testified that he would not be willing to buy this timber from the examination he made unless he bought it very cheap. He never examined the grades

of the timber down there. His knowledge was based upon what he saw on his trip and what he has always heard of it. He had not examined the cruises and was accepting the cruises and reports as being accurate, honest, careful cruises, his mind might be a great deal changed.

Appellants' witnesses uniformly testified to a value of \$2.00 per thousand feet for the standing timber in Zone No. 1, otherwise known as the "straits" timber, and a value of \$1.00 per thousand feet for the timber of appellants in the interior zones, and they uniformly admitted that this judgment or valuation was based, not upon an actual and thorough examination of the timber, nor upon a careful consideration of the cruise reports, but was largely a first impression based upon hearsay and an automobile ride which did not even extend down into the timber of the appellants Ruddock and McCarthy.

As a matter of fact, standing alone and uncontradicted, it would not be sufficient to overturn and set aside the judgment of the county assessor as sustained and approved by the county board of equalization.

Turning to a consideration of the testimony adduced by the appellees concerning these timber land values, we find an entirely different condition. Not

only do they exhibit a thorough familiarity with the subject, not only have they examined the detailed record of the survey or cruise of this timber, but to a large extent they have also made careful examination of the timber upon the ground, going miles from the wagon road, carefully locating section corners so as to identify the tracts examined, measuring trees, discussing their quality, studying the physical characteristics of the country, the nature of the soil, and even observing elevations with aneroid barometers. It will be found that the character, quality and exactness of their testimony completely outweighs that of appellants' witnesses, and more than sustains the sound judgment and honest purpose of the assessing officers of Clallam County.

The first witness for appellees was Alex Polson. He has been engaged in the lumber and logging business for over forty years, and in the State of Washington since 1879. (Record, p. 305.) He is familiar with the value of timber and timberlands throughout the Northwest and the State of Washington, particularly. He has examined the cruises of Clallam County, showing the timber of the appellants, also the county cruises of the "straits" timber in Zone No. 1, including the timber of the Puget Sound Mills & Timber Company, Merrill & Ring and the Goodyear Lumber Company. He is acquainted with

Lou Duvall, and would buy and sell on his cruise; says that in buying timber he does not make it a practice to go personally and inspect every tract of timber, but buys upon cruises of responsible cruisers. Considers the fir, spruce and cedar on appellants' land in the interior, on March 1st, 1912, as worth \$2.00 per thousand feet (Record, p. 308), and gave it the same value on the 1st of March, 1914; places the same value upon the Merrill & Ring, Goodyear and the Puget Sound Mills & Timber Company's timber in the "straits" zone. Testifies that he is putting in from half a million to seven hundred and fifty thousand feet of logs daily (Record, p. 309), and is operating over a logging road a distance of twenty or thirty miles; that he pulled 300,000,000 feet over a five per cent adverse grade. That in giving his testimony he took into consideration the necessity of constructing a railroad into the interior of Clallam County. (Record, p. 312.) He testified that the then present price of logs in the Puget Sound market was, on hemlock from six to seven dollars, spruce six to twelve, fir six, eight and eleven dollars per thousand feet; that the price on March 1st, 1912, was about one dollar higher on all grades. (Record, p. 314.) This witness testified that he had carefully examined the assessed value of timber and timber lands in the State of Washintgon because he makes it his business to annually attend the meet-

ings of the State Board of Equalization, and that the timber in Clallam County is assessed less per thousand feet than timber similarly located in Grays Harbor County, where timber 25 miles back from tide water is assessed at over one dollar per thousand. (Record, p. 315.) Hemlock being assessed at from 25 to 40 cents both in Chehalis County and Grays Harbor County. Asked if he acquainted himself with the interior lands of Lacey & Company in Clallam County (Record, p. 316) he testified that he had followed that up for ten years; that he has been through the lands—walked through them—for the purpose of seeing the country and to see the timber; that he was in that country over twenty years ago; that he has had cruisers' reports of all of that country for the past ten years. (Record, p. 317.) That he had his own cruisers' reports on the character of the country, not only on that land, but upon the entire forest reserve of the Olympic Mountains, and, generally, under the most gruelling cross-examination, shows a thorough and intimate knowledge, not only of the value of the timber lands, but of all matters connected with the logging and lumber business.

Wm. J. Chisholm, witness for appellees, has been a logger for forty-five years—in Michigan, Minnesota and Washington; eight years in the State of Washington. Is general manager of the Merrill &

Ring Logging Company (Record, p. 319); familiar with the manner and methods of logging in the Northwest, and with the cost of logging. Has had charge of the construction and operation of logging railroads. Has built 400 to 500 miles, while in the logging business. Is acquainted with the market price of logs in the Puget Sound markets and with the value of standing timber. Has been over certain portions of the timber lands lying along the straits in Clallam County, comprising the holdings of Goodyear, Merrill & Ring, the Milwaukee Land Company and the Puget Sound Mills & Timber Company. Has been across the appellants' timber, along the Sol Duc River and from Lake Crescent to Mora, and from Bear River to Clallam along the road; is acquainted with the topography of the country and familiar with the conditions attending upon the logging operations in the straits and in the interior.

Says (Record, p. 320) that the Lacey holdings in the interior belonging to appellants would log into the waters of the straits as cheaply as the timber in Zone No. 1, owing to the fact of its being in big holdings and the country being level in the interior zone. Has examined the county cruises of this timber; places a value on the interior timber of \$1.50 per thousand feet, and the same valuation on

the timber in the "straits" zone, on March 1st, 1912, and on March 1st, 1914. Undergoes a long and tedious cross-examination (Record, p. 320) in which he testifies in detail to the cost of constructing logging railroads that might become necessary to the removal of appellants' timber. That his valuation of \$1.50 per thousand was placed on fir only (Record, p. 326); that spruce and cedar ought to be worth more, in that country \$2.00 to \$2.50 per thousand feet for the cedar and spruce. That it would require practically as much railroad to log the straits timber as it would to log the Lacey holdings in the interior (Record, p. 327), and, generally, displays the most thorough familiarity with the whole subject.

Appellees' witness H. D. Newbury (Record, p. 331), testified that his occupation is logging, lumber, saw milling business, buying and selling timber; has been engaged in this from twenty-five to thirty years in Oregon and Washington. Has had the actual supervision of logging and lumbering operations. Has supervised the construction and operating of logging railroads; is familiar with methods of logging in the Northwest and the cost of logging, and the market price of logs in the Puget Sound markets for a number of years last past; is familiar with the value of standing timber in the State of Washington

generally. Has been upon and across a portion of the land of appellants in Clallam Coutny and has made a sufficient investigation to form an idea as to the conditions of conducting logging operations and the value of timber. Is also familiar with the lands lying along the straits and beyond Clallam Bay, and has examined the county cruises of Clallam County; that he examined the lands of appellants in August preceding the trial, and was in the timber about five days traveling around through it; was in the timber along the straits for a part of two days (Record, p. 332); that he used an aneroid barometer and took elevations here and there; made a careful study of the physical characteristics of the country in these respective zones. That he made investigations of the character and quality of the soil upon which the timber of the appellants stands, and carefully examined into the grade, quality and condition of the timber upon these lands. "Went out and traveled around through the timber and made an examination once in a while. I would take up an acre and count it and measure it and put a tape line on various trees and figure them out, just to look it over." Again: "In traveling through it we made an examination and passed our opinion on the different trees, and measured them and examined the timber." (Record, p. 333.) Testifies that the value of appellants' timber on March 1, 1912,

was from \$1.75 to \$2.00 per thousand feet; that the value of the "straits" timber would be about the same, and that the value of both would be the same in March, 1914, as in March, 1912. Examined the cruise books of Clallam County. (Record, p. 334.) During this examination had a map showing the location of appellants' timber; also had a map of the appellants' lands with them in the woods. Stopped for section lines and section corners so as to locate himself on the map, "because I couldn't tell anything about any map and where I was in the woods unless I could find a Government corner so I could read it and know where I was and what township I was in."

Asked by counsel for appellants:

"Q. In saying that the interior lands have, in your opinion, the same value as the lands on the exterior, you took into consideration the fact that there is a longer haul?

A. Yes, sir.

Q. And a greater cost of operation?

A. I differ with you. I take it that there is not. That the greater cost of operating is out there on the straits. After the plant is in there the only difference there is that you will operate cheaper on good lands than you will on the rough country. Where you are building roads up through the mountains and have quite steep grades, and high cliffs to take off, it costs more to actually put the logs on the railroad after the plant is in.
* * * * (Record, p. 335.)

Q. Did you go up in the hills; did you go very far away from the traveled road?

A. We were in township 29, range 13, in township 30, range 13—no, 29, range 12, and township 30, range 12. * * *

Q. You made an observation of all of those townships, did you?

A. Some, yes, sir; don't think that I went all through each one of those five acres, we went through some parts of it. * * * We would take up a few sections here and a few sections there, you know."

Believes that the interior can be logged off for less money than the timber in the straits zone. (Record, p. 337.) Says that railroads must be used in logging the "straits" timber as well as the timber in the interior. Says that the timber of the appellants along the Sol Duc River and between the Calawa and the Sol Duc were the best he had ever seen; as good as anybody has, and the logging conditions are fine. The witness did not think that persons driving in an automobile from Clallam to Forks and back and up to Sol Duc Hot Springs could form an accurate opinion as to the quality, quantity and character of timber within these zones.

Charles McGuire, witness for the appellees (Record, p. 339), is a timber cruiser, buyer and seller; is in the employ of one of the Eastern timber buyers, and has been for several years; is familiar with timber values in Western Washintgon, and with logging operations, and is interested in some.

Has made an examination and inspection upon the ground of appellants' timber lands, and has been over the timber of the Puget Sound Mills & Timber Company, the Milwaukee holdings, the holdings of Merrill & Ring, and the Goodyear holdings lying along the straits in Zone No. 1. What the witness saw of the appellants' timber along the Sol Duc valley is good timber, of good quality and good ground to log. This is in Zone No. 2. The timber lands in Zone No. 3 were more rolling and rougher, but the usual method would log it. The lands along the straits (Zone No. 1) are much more cut up with ravines and narrow canyons than back in the interior. In going through the timber lands both in the interior and on the straits, witness observed the character of the country, took aneroid readings of the elevations with a view to determining grades and cost of railroads. Says the land in Zone No. 2 on the Sol Duc River west of Forks would be agricultural land when logged off. In his judgment there would be but very little difference in the cost of placing the timber from the interior in the waters of the straits as compared with the timber in the straits zone. The appellants' timber in the interior on March 1st, 1912, was of the value of \$2.00 per thousand feet; the straits timber in Zone No. 1 was about the same value. Witness' opinion is based upon the county cruise and an examination of the

timber. (Record, p. 340.) He was in the timber five days. He had the cruises and had run a compass through that country. At different places stopped and picked up section lines and went out to the corners so as to be sure of the ground they were on, and took a general look around as to the quantity and quality of the timber that was standing. At one place they were probably six miles away from the wagon road. The valuation of the timber lands in 1914 would be about the same as in 1912, both as to the straits and as to the interior timber, namely, \$2.00 per thousand feet. Witness was not connected with the Merrill & Ring, or the Milwaukee Land Company, or the Puget Sound Mills & Timber Company, or the Lacey Timber Company.

On cross-examination the witness admitted that at one time he had worked for the T. M. Ring Logging Company and the Continental Timber Company—had been cruising for them, had done considerable cruising in Clallam County at Twin Rivers and Pysht River along the straits. Did some cruising in the interior in 1912 and 1913 for the Menasha Woodenware Company of Wisconsin; also cruised timber on the Hoko River in 1912. Had cruised timber on the straits for the Continental Timber Company and the Milwaukee Railroad Company

from two to three months. (Record, p. 341.) Had never been down in the interior timber except the six days referred to, of which practically all of the time was spent in examining the timber. Witness conducted logging operations in Idaho in 1893, 1894 and 1895. Was engaged in the mill business for about fifteen years; afterwards was with the Blue Mountain Lumber Company in Washington, in Asotin County, and is now logging in Jefferson County, near Port Ludlow. He looks after the cutting of the timber; the timber has to be transported over a railroad five and a half to six miles long. Witness went over the Clallam County lands with the other witnesses who testified for the appellees. He examined the county cruises before his inspection of lands, and afterwards.

This witness was also put through a long and gruelling cross-examination (Record, p. 342), an examination of which will disclose a thorough and complete knowledge of the logging and lumber business, methods of logging, cost of logging, cost of railroad construction, and, in fact, a familiarity with every factor essential to a correct appraisal of the market value of the timber lands in controversy. And, in concluding his testimony, he says that the timber of appellants is the best tract of timber he has ever seen. (Record, p. 355.)

C. I. Wanamaker (Record, p. 356), witness for appellees, lives in Port Townsend, Jefferson County. Is a merchant and interested in the logging business. Is also chairman of the Board of County Commissioners of Jefferson County. At one time conducted logging operations on the Hoko River at West Clallam in the so-called "straits" zone, or Zone No. 1, in Clallam County. His logs were put into salt water at the mouth of the Hoko River and into Clallam Bay. Has been engaged in the logging business in Washington for about eight years, and is familiar with logging methods. Has bought timber in Clallam County and has recently made investigation of appellants' land in the interior of Clallam County. Is familiar with the timber on the "straits" zone, and with the physical characteristics of the country of both the "straits" zone and the interior. Has been across from Clallam Bay over what is known as Burnt Mountain near Sol Duc, and around Forks. Has observed the physical characteristics of the country with reference to the construction of railroads, character and condition of the soil, etc. Believes that the logs can be put into salt water from both the interior and the "straits" zone at about the same cost. Testifies that he value of appellants' timber, known as the Lacey holdings, on the 1st of March, 1912, was from \$1.75 to \$2.00 per thousand feet, and about the same on March 1st, 1914; that

the timber in the "straits" zone at the same periods was worth substantially the same. Witness has made an examination of the county cruises of Clallam County. On cross-examination (Record, p. 357) witness states that he saw the timber of appellants in the interior in the month of August, preceding the trial—went down with other witnesses of appellees and made substantially the same sort of an investigation. Made an examination of the county cruises just before going out on the investigating trip. He did not look over the cruises of the "straits" timber at that time; he had looked them over in 1912 and 1913, on an entirely different occasion. At that time he was looking up timber to purchase himself; didn't examine the cruise of the Merrill & Ring timber in 1912 and 1913, but had been over that timber at that time. And, concluding his testimony (Record, p. 362), the witness said of the appellants' lands, "It is the best tract of timber I ever saw."

The qualifications of R. D. Merrill, witness on behalf of appellees were conceded by appellants. The witness is a member of the firm of Merrill & Ring, owners of an extensive body of timber in Clallam County. He is familiar with the lands in the "straits" zone, or Zone No. 1, and also with the appellants'. Witness says, "There are a num-

ber of elements or factors to be taken into consideration—the cost of operating, the quality of the timber; the cost of operating, of course, depends upon a number of conditions, which are the lay of the ground, quantity of timber per acre, the character of timber, whether there is water for donkey engines, or things of that kind, and the character of the soil.” “If the ground is broken, of course, it would make a difference in the cost of falling and hauling; if the ground is level it is less broken, easier to get to railroads, and easier to build railroads and get the logs to a railroad, and cheaper in every way; less wear and tear on the machinery—and you have to consider fire risk.” (Record, p. 362.)

He goes thoroughly and completely into all of the elements and factors that affect the market value of standing timber, discusses the cost of logging on rough ground and on practically smooth ground; the cost of logging old growth ripe timber as compared with young growth timber. Goes thoroughly into the question of construction and operation of logging railroads. (Record, p. 365.) Says the fire risk in the interior is better than on the straits. Says the timber in the interior zone can be logged “as cheap as any timber I know of in the State of Washington; I think cheaper than any tim-

ber on the Pacific Coast, logged to cars; that is, putting on cars ready to haul to the market." (Record, p. 366.) "I figure that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the county estimates, some three billion feet, and two hundred thousand dollars at a cost per thousand, would be a little over five cents a thousand. Take the Pysht tract, which they have referred to considerably; we have about seven hundred million there, and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, and that would be about the same cost per thousand, about six or seven cents a thousand, practically no difference considering the two tracts. It would cost no more to build a railroad to open up one than the other." (Record, pp. 367, 368.)

Witness then follows with a detailed explanation of the cost of logging and handling logs over logging railroads. (Record, p. 370.) Asked:

"Q. What in your judgment is a comparative value of a stand of timber per thousand feet in Zone No. 1 and in Zones Nos. 2 and 4?

A. Well, I think that the timber in the interior is worth fully as much or more than the timber on the straits. Take it as a whole, I know it is worth more; that is, take all tracts

along the straits as one tract, and all the Lacey tract in the interior. The Laceys have practically all the fir timber in here, excepting the state lands, and some which the Milwaukee has. It is a more valuable tract of timber." (Record, p. 371.)

Witness is sure that the Lacey people could have operated their timber during the period of 1912, 1913 and 1914 at a profit, at a dollar per thousand stumpage, basing that at \$2.00 per thousand (Record, p. 382); that his own business has been operated at a profit during that time at both Grays Harbor and Everett. He further stated that they bought a tract of E. K. Wood Lumber Company on which there was five hundred million feet of timber, and paid in excess of \$2.00 per thousand feet for it; it was in Township 21, Range 9, in Chehalis County, in the same belt as appellants' timber, more than 25 miles from market or salt water; "would have to be logged by railroad after you build it; there was not any railroad when the timber was purchased, but is building it now." (Record, p. 389.) This timber was purchased in 1912.

This witness was subjected to a long and searching cross-examination, which an examination of the record will disclose only serves to more thoroughly emphasize his familiarity with the subject and his thorough qualification to testify as an expert witness.

N. I. PETERSON, witness for appellees (Record, p. 396), has been engaged in the logging business for the past twenty years, now operating in Dungeness in the east end of Clallam County; has been in active supervision of logging operations during all of that time in the State of Washington, and has bought timber lands in the state. Is familiar with the market price of logs and the market price of timber and timber lands. Has driven through the timber lands of appellants and has examined the county cruises of those lands. Places a market value on appellants' timber in Zones 2 and 4 of \$2.00 per thousand feet on March 1st, 1912, and the same value on March 1st, 1914; places a value of \$2.00 per thousand on said dates on the timber in Zone No. 1, the "straits" zone.

A careful examination of the testimony reveals the fact that appellants' witnesses confess the most casual inspection of the timber, merely what could be seen riding through in an automobile; did not even go into the timber of appellant Ruddock & McCarthy; made no examination of the county cruises, or any other cruises, and none of them would have bought or sold upon the information possessed by them. As a matter of fact, they pretty generally admitted their own lack of qualification to testify.

The witnesses for appellees, on the other hand, examined the timber with a great deal of care, locating themselves upon specific tracts of land, measuring trees, discussing the quality of the timber, taking elevations at various places with aneroid barometers, examining the character and quality of the soil, carefully considering the logging and other conditions surrounding the timber, the possibilities and cost of railroads for its ultimate removal, and displaying upon the most searching cross-examination a thorough familiarity with all phases of the subject. They out-numbered the appellants' witnesses, and greatly out-weighed them in quality and character of testimony. They all testified to the fact that appellants' timber in the interior zone is worth fully as much, if not more, than the timber situated in the "straits" zone, and a majority of all of the witnesses examined stated positively that the timber of the appellants in the interior zone had a value on March 1st, 1912, and on March 1st, 1914, of at least \$2.00 per thousand feet; while one witness testifies to a market value of \$1.00 to \$1.75 per thousand feet for fir, and a value of \$2.00 to \$2.25 per thousand feet for cedar and spruce, and another witness places a value of \$1.75 to \$2.00 per thousand feet on appellants' timber.

The timber of appellants was assessed in 1912

at 70 cents per thousand feet in one zone for fir, spruce and cedar, and at 60 cents in another zone. The preponderance of the best qualified testimony shows that it had at the time a market value of \$2.00 per thousand feet; in other words, it was assessed at approximately 35 per cent of its value. The witness Hallahan, County Assessor, who made the assessment, testified (Record, p. 504) that he was endeavoring to assess all of the property in Clallam County at fifty per cent of its value; and at another time he testified (Record, p. 511) that he raised the assessment of all fir, spruce and cedar timber 10 cents a thousand in 1914, because it had been previously assessed too low, and we find it assessed in 1914 at 80 cents per thousand feet in one zone, and 70 cents in another zone. The value has been established at \$2.00 per thousand feet by a preponderance of the best testimony, which makes an assessment of only 40 per cent of its market value for 1914. This raise in the assessed value of the timber was applied to all of the timber lands in Clallam County, and did not in any way discriminate against these appellants. Not only was this class of property raised in value, but city lots in the business district of Port Angeles were increased 73 per cent, and residence or outlying lots in the same city were increased 23 per cent. Farm lands were increased approximately 10 per cent, and un-

improved or wild lands were raised about 16 per cent in 1914, showing beyond question an honest and earnest effort on the part of the county assessor to fully, fairly and honestly discharge the duties of his office. We submit that the weight of evidence establishes the fact that there has been no discrimination whatsoever in the assessment of timber and timber lands between different ownerships or different localities.

RAILROADS.

Appellants lay great stress upon the cost of railroad construction and operation, endeavoring to persuade the court to enter into a series of complicated computations by taking the market value of logs in the water and figuring back through all of the processes of dumping, transportation, loading, yarding, cutting and falling, to the value of the log in the tree in the woods; but we submit that this is not the correct method to be employed by either the court or by the equalizing officers. It may be proper, in cross-examination, to test the qualifications of the witnesses, but the market value of any land, either timber or otherwise, is not to be ascertained in such a manner. It is to be ascertained by direct testimony of men familiar with the property, its surroundings, its uses and purposes, and its desirability as an investment. The witnesses for ap-

pellees in this case, upon cross-examination, have shown a most thorough and expert familiarity with the subject, as well as a thorough knowledge of the market value of all of the timber in contention and concerning which they have given positive testimony; and it is this testimony which should govern, not any far-fetched deductions to be made by complicated computations.

It is alleged in appellants' complaint (paragraph 21; Record, p. 17) that their lands are at present wholly destitute of facilities for transportation, and it is impossible to bring the timber thereon into the market; that this cannot be accomplished except by the construction of a railroad at great expense. They also allege that this expense is beyond the present means at command of appellants. This allegation has nothing to do with the case, and the fact that appellants may not be in a position to finance extensive logging operations has no affect upon, and does not in the least influence the market value of their timber or of any other timber in that vicinity.

There was much testimony adduced at the trial upon the railroad phase of the case, and an examination of it will disclose the fact that appellants completely failed to sustain this immaterial contention. On the other hand, compelled to meet it, appellees

completely disproved it. That railroads could be cheaply constructed and easily operated is evidenced by the testimony of R. H. Thompson, civil engineer, conceded to be thoroughly qualified (Record, p. 301), and who had made a thorough investigation, upon the ground, and whose written report and estimate of the cost of such railroad is on file as "Plaintiffs' Exhibit No. 26" (Record, p. 304); by the testimony of S. A. Walker, civil engineer, qualified and competent (Record, p. 394); and by the testimony of R. W. Remp, civil engineer of large experience, who made a survey upon the ground (Record, p. 400); as well as by the testimony of other witnesses for appellee, who testified to the value of timber.

The witness William J. Chisholm has built four to five hundred miles of logging railroad (Record, p. 319). On cross-examination (Record, p. 333, *et seq.*), goes into railroad construction cost in detail, showing a thorough familiarity with the subject; says it would take no more equipment to log the interior timber than it would the "straits" timber, except you might have to have a little heavier locomotive on the main line. (Record, p. 328.) That the cost of hauling logs after you get them to the main line is very small.

The witness Newbury (Record, p. 326), asked if

“Q. In saying that the value of this timber in the interior is as great as that on the straits, did you take into consideration that this timber had to be hauled out a good many miles before it got to the straits?

A. My experience is that after your plant is in the transportation itself does not cut so much ice in the logging; that is not the expensive part after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. After you get your logs loaded on the cars—

(Interrupted by counsel for appellants.)

Q. Didn't you take into consideration the upkeep of your road and the necessity of keeping up your rolling stock and equipment and the cost of bringing out those logs?

A. I would over balance that by the different localities you log in; that is not the expensive part of it.” (Record, p. 388.)

He testifies further that railroads must be used in the logging of the straits timber as well as the interior timber.

Appellees' witness Charles McGuire (Record, p. 351) on cross-examination says that it would cost from ninety-six to one hundred and twenty thousand dollars to build a road from Clallam Bay into the appellants' timber. (Record, p. 352.) Gives in detail the amount of equipment it would require; that the cost of putting in such a road completely equipped to log the timber in the interior would not exceed ten cents a thousand feet.

Appellees' witness C. I. Wanamaker says it will take a road 18 miles long to open appellants' timber, and does not consider this any advantage in favor of the timber lying on Pysht River, in Zone No. 1, as against the land in the interior—or very little difference. (Record, pp. 359-360.)

Appellees' witness R. D. Merrill (Record, p. 367), testified: "I figured that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the county estimates, some three billion feet, and \$200,000.00 at a cost per thousand feet, would be a little over five cents per thousand, the cost of that railroad." And as to the cost of hauling timber: "Of course, it would cost a little more to haul from the interior than from the exterior" (Record, p. 368); but shows that that would be overcome by the cheaper cost of logging. (Record, p. 369.) On page 377 of the record he estimates that it would only increase the cost about one cent a thousand, a figure so small that it would not be considered at all in figuring the cost of operation.

It is clearly shown by the testimony of all of the qualified witnesses that the cost of moving saw logs from the interior zone, as compared with the exterior zone, is of very small moment—so small as

to scarcely affect the value of the commodity handled, saw logs—and to not reflect itself at all in the value of standing timber when all of the other facts and features are taken into consideration. But even at that, the assessor recognized a distinction and assessed the timber of the appellants in the interior zones at from ten to twenty cents per thousand less than he assessed the timber in the exterior zone. And if we concede that his assessment were a 50 per cent assessment, he has made a difference in the *actual* value in favor of the appellants of from twenty to forty cents per thousand feet—surely enough—yes, much more than enough—to take care of the whole transportation problem; a generous allowance indeed.

We would not cumber the record with so much concerning railroad construction and operation, but for the fact that much stress has been laid upon it by appellants. Not only did they raise the issue in their complaint, but in appellants' brief, at page 119, they used the following language:

“Second: The valuations by the defendants' witnesses were all based upon the speculative value of what the logs would be worth if a railroad was built into the timber and the timber opened up, estimating it from the standpoint of the profits and losses of an operating business not yet undertaken, and most of defendants' witnesses expressly admitting that they know of no values within five years past of timber

lands in Clallam County, either on the straits or on the interior, and never heard of any sales at more than \$1.00 per thousand for the lands.

Third: Their valuation from an operative standpoint was based upon the assumption of the building of a railroad from the lands on the interior to the straits to the mouth of the Sysht River, or to Port Angeles."

We submit that the statement that the valuations by defendants' witnesses were all based upon speculative value of what logs would be worth if a railroad was built into the timber, etc., is specious and not borne out by the facts. All of appellees' witnesses who testified to market values of timber lands, testified in direct and positive manner, and the direct testimony of every witness was expressly confined to market value. After these witnesses had so testified, counsel for appellants by an elaborate process of cross-examination brought into the record a great mass of testimony relating to varied and numerous factors which only remotely enter into the market value of timberlands, such as distance from mills, cost of logging operations, cost of railway transportation, freight rates, etc., laying particular stress upon the railroad phase of the case. It is true that after these factors had been drawn into the case by cross-examination, each witness testified that he had taken them into consideration in making his estimate of the market value. All of this testimony was developed, not upon direct examination,

but upon cross-examination, none of which was proper except as their knowledge of these conditions might affect the credibility of the witnesses and the weight of their testimony as showing their familiarity or lack of familiarity with the factors which may influence market value.

Appellants' statement that valuations by appellees' witnesses were all based upon speculative value of what logs would be worth if a railroad were built into the timber and the timber opened up, estimating it from a standpoint of profits and losses of an operating business not yet undertaken, is an express mis-statement of the effect of the testimony of the witnesses. It was only after appellants' counsel had gone at great length into the cost of logging operations, the cost of railroad construction and the matter of freight rates, that appellees introduced testimony of the various engineering witnesses whose testimony supplemented and verified the statements made by appellees' timber witnesses during the course of their cross-examination.

A great deal of testimony with reference to the cost of transporting logs was introduced into the record by appellants, including the testimony of two representatives of transcontinental railroads, the Northern Pacific and the Chicago, Milwaukee & St. Paul, and the tariff sheets on logs of these two com-

panies were introduced in evidence. The matter of log transportation by transcontinental railways can be but very remotely related to the issues in this case. It is so far fetched as to be practically negligible, because a tariff of \$1.25 or \$1.50 per thousand feet on logs, a manufactured product, has but the most remote and indirect relation to the fair cash market value of timber lands. It is only after the timber standing upon the lands has been felled, bucked, yarded and transported by a logging railroad to a shipping point upon a transcontinental railway, becoming by these operations an entirely different commodity, possessing a higher recognized and standardized value, that the matter of freight rates becomes of importance, and then it has a bearing, not upon the value of lands containing standing timber, but upon such new, separate and distinct commodity, namely, manufactured saw logs.

On page 132 of their brief, appellants make this statement:

“Both classes of timber, they say, are worth \$2.00 per thousand, and yet it costs \$1.50 per thousand to pick up this interior timber and put it where now stands the timber of the straits zone, on Clallam Bay, Pysht River, or Mike Earles’ camp near Port Crescent.”

We submit that there is not one atom of evidence in the record with which to clothe this naked assertion. But, conceding it for the sake of argument,

its fallacy is clearly shown if it is borne in mind that upon its arrival at Clallam Bay, Pysht River, or Mike Earles' camp at Port Crescent, it has a value of \$6.00, \$8.00 and \$11.00 per thousand feet instead of the value of \$2.00 per thousand which it possessed in the tree growing upon the lands in the interior zones. Freight rates are a matter of concern under such circumstances to the buyer of logs, or to the saw mill operator, to whom those rates become an influencing factor in fixing the market value, not of standing timber, but of manufactured saw logs, and to be compared with values, not at \$2.00 per thousand for standing timber, but with current market quotations for saw logs at \$6.00, \$8.00 and \$11.00 per thousand feet.

HEMLOCK.

Appellants pay great attention to the value placed upon hemlock timber, insisting that the valuation given it by the assessing officers works an injustice upon them which entitles them to partial relief. Conceding, for the purposes of the argument, that the hemlock may have been overvalued, yet there is nothing in the record to show that any discrimination was practiced against appellants. An examination of the zone map attached to and made a part of appellants' brief, will disclose the fact that hemlock was uniformly and proportionately

assessed in all parts of the county. If overvalued in one locality, it was overvalued to an equal extent in every other locality. This fact in itself should be conclusive evidence of the honesty and good faith of the assessing officer and completely negatives any assumption of discrimination against the lands of appellants or in favor of the lands of any other holder. It may have been an error in judgment on the part of the county assessor, but it certainly was not fraud, and the courts will not interfere to correct errors in judgment or to make a reassessment because of a slight overvaluation in property, certainly not where the overvaluation was uniform upon all properties of like character similarly situated.

In the State of Washington taxes upon real property are laid *in rem*, and it is to be borne in mind that it is the land and not the timber which bears the assessment. The assessing officer, through his deputies, the timber cruisers, makes a thorough and searching inspection of the timber standing upon the lands and uses this as an important factor to assist him in making a fair and just appraisal of given lots or tracts of the land upon which it stands, and we submit that the testimony in this case conclusively shows that no tract of land in controversy has been overvalued. Some elements may

have been taken at a valuation slightly in excess of their true value, other elements may have been considered below their true value, but when all of the elements were considered and the valuations finally fixed and placed upon the assessment rolls, the lands were not overassessed and no discrimination has been shown.

We have already pointed out that value is a question of opinion upon which, as the court knows, the minds of reasonable men differ most materially. Of the two witnesses produced by the appellants, most competent to judge of the value of their property, Thomas Bordeaux is probably best qualified by reason of his business experience and standing in the lumber world, and Earle C. Duvall, who made the cruise for the county, is so by reason of his actual experience with the timber. Mr. Bordeaux testified that the appellants' hemlock is worth 50 cents per thousand; that the hemlock in the Straits zone is worth 75 cents per thousand (Record, p. 119). Duvall swore that appellants' hemlock was worth 50 cents per thousand (Record, p. 125). He swore that the Straits hemlock was worth 75 cents per thousand (Record, p. 125).

Before the court is justified in finding fraud upon an excessive valuation, the excess must be so great as to be absolutely conclusive, and all the

cases either bear out this statement of the law or go further and hold that excessive valuation of itself is not sufficient to establish fraud in the absence of other circumstances bearing it out. So in *Olympia Water Works vs. Gelbach*, 16 Wash. 482, the court held that the excess must be so great that fraud must be conclusively presumed.

The same language occurs in *Templeton vs. Pierce County*, 25 Wash. 377, but in Illinois the courts go even further and hold that even excessive valuation will not authorize the court to declare the assessment fraudulent.

Burton Stock Car Co. vs. Traeger, 187 Ill. 9;
58 N. E. 418;

Sanitary Dits. of Chicago vs. Gifford, 100 N.
E. 953; 257 Ill. 424.

An additional feature of this suit is equally conclusive. Allegations in the bill of complaint charge a conspiracy against appellants and in favor, among others, of the timber owners in the Straits zone. These allegations will be found (in cause number 2907) in paragraphs 7, 18, 19, 22 and 24. As a matter of fact, paragraph 7 specifically refrains from charging fraud in the assessment of the timber in the Straits zone.

In other words, the charge in the complaint and the theory on which the case was tried, was that the assessment of all the timber in the Straits zone

was at least a fair assessment. But now, appellants are urging upon the court a theory at war with the one on which the case was tried, namely: that the assessment of the hemlock in the Straits zone, as well as in the Interior, was a fraud.

As a matter of fact, the valuation on the hemlock in Clallam County is no different than the valuation on the hemlock in other portions of this same belt of Olympic Peninsula timber. Alex Polson testified that the hemlock both in Chehalis and in Grays Harbor County was assessed from 25 cents to 40 cents per thousand feet stumpage (Record, p. 316). This record shows that in Clallam County the assessment on the hemlock was from 20 cents to 40 cents and counsels' present theory would convict not only the assessor of Clallam County, but the assessors of all the contiguous counties of fraud in the matter of the hemlock valuation.

Appellants' assessment for 1914 is in round figures \$1,667,000.00. The valuation of the hemlock, as shown by their brief, is in round numbers \$223,426.00. In other words, the hemlock valuation is only 13 $\frac{4}{10}$ per cent of the value of their total valuation. Where an assessment concerns property worth several millions of dollars about which the witnesses are testifying, more careful consideration is given to the more valuable property; and upon

comparing the record the testimony of the witnesses on the valuation of the fir, spruce and cedar as compared with their testimony as to the valuation of the hemlock, the court will be struck with the fact that the former received much more careful consideration from all witnesses than did the latter. Their statements have, therefore, been much more loose, and their opinion has been formed much more carelessly than it has been in regard to the more valuable property. The hemlock being regarded by all the witnesses as a mere incident, both because it is of less value than the other timber and because it is so much smaller in amount.

The idea that the assessing officer of this county desired to defraud in the matter of the valuation of property which constitutes about one-seventh of the value of the timber, and put a fair valuation on the six-sevenths, is an idea which probably will find support in the mind of no person not interested in litigating the question. Moreover, if the court takes the testimony of the witnesses for the appellees and attempts to make a judicial determination of the value of this timber, the finding would be that the first class timber was assessed at much less than 50 per cent of its value, and even were the hemlock overvalued the total assessment on the property of appellants would not be 50 per cent of its value.

This result necessarily occurs in every assessment that is made. It is not possible for the assessing officer to place a valuation upon property which is exactly 50 per cent of what some third party would testify is its actual value. Personal idiosyncrasies necessarily result in a different judgment on different classes of property, and the fact that the judgment of the assessor differs on certain classes of property from the judgment of witnesses who have testified as to its value, is the best possible evidence the court could have that the assessor used his independent judgment.

We believe this contention of appellants originates in the circumstance of the slant the testimony happened to receive upon the trial of the case, because the court will search in vain through the pleadings in the case and the testimony of the witnesses for the appellants, for any fancied distinction in the honesty of the valuation as between the hemlock and the first class timber. The alleged fraudulent valuation of the hemlock as being much greater than the valuation of other timber, apparently never occurred to appellants until after the testimony was all in, and this circumstance is only less remarkable than the fact that the owners of hemlock in the Straits zone, which if valueless is equally valueless with the appellants' hemlock, have not discovered

the fact that instead of their being a discrimination in the timber assessment in their favor, that there is (if appellants' position be true) a discrimination very materially against them in the matter of the hemlock valuation. Appellants ask the court to wipe out the entire valuation of the hemlock on the theory that that class of timber is absolutely valueless. Appellants' hemlock is valued on an average of 30 cents per thousand, while the timber owners in the Straits zone possessing hemlock which is equally valueless (if appellants are correct) are assessed on the hemlock at 40 cents per thousand without complaint. Such a situation is, of course, impossible.

In this connection it is interesting to note that in the case of *Washington Water Power Co. vs. Kootenai County*, 210 Fed. 867, the district court of Idaho did exactly what the appellants are now asking this court to do, namely: make an arbitrary reduction upon one item of a disputed assessment, and we quote from that decision the comment of this court upon the action of the lower court in that regard, as follows:

“The trial judge found that the two dams above mentioned were overvalued in the assessment to the extent of \$386,229, and that the railway spur and bridge were likewise overvalued to the extent of \$28,954.61, and that such overvaluation were so gross, and the manner

of making them so unreasonable that the complainant was entitled to protection against the taxes on those overvaluations, which protection it gave by the decree entered, denying the complainant the relief prayed in all other respects.

(2) As there is no appeal on behalf of the county from that portion of the judgment awarding the complainant the limited relief mentioned, that matter is not for our consideration." (Page 869.)

REAL ESTATE ASSESSMENT.

FARMS AND SEQUIM LOTS.

By reason of the proximity of the townsite of Sequim to the farming community in the county, it will be easier to consider the Sequim lots in connection with the discussion of the value of the surrounding farming lands. In the discussion of the timber assessment it has appeared that practically no transfers have occurred within a period sufficiently recent to afford the County Assessor a standard by which to measure the market value of timber. When, however, we consider the value of farm property and of town lots, there would be much less excuse for a mistake on the part of the Assessor, and he can be expected to follow values much more closely. We have in this record two classes of evidence of real estate values. We have evidence of actual sales at or about the time of the assessments,

and we have the testimony of a non-resident operator on behalf of appellants, together with the testimony of experts for the county, who were competent to pass upon values. Appellants, in their brief, have called the attention of the court to but one class of evidence, that of the experts, and, before placing before the court every instance of actual transfers which either side was able to obtain and place in the record, we will consider authorities to show the comparative reliability of actual sales, under normal conditions, as opposed to the testimony of experts.

In *The Albert Dumois*, 177 U. S. 240, 255; 44 Law Ed. 751, 760, the United States Supreme Court, in fixing the market value of a vessel lost in collision, uses this language:

“There was no error in fixing the value of the *Argo* at the sum of \$15,000, an increase of \$4,000 over the amount fixed by the district court. The evidence of her builders was that she originally cost \$18,000 and that if she had been kept in good repair she would have been worth two-thirds of that amount at the time of the collision. There was also testimony to the effect that her owner had, at the time of the collision, concluded a sale of one-half the *Argo* for \$7,500 and that it was to have been delivered and the money paid for this moiety on the day following that upon which she was lost, and upon her return to the city. *This is better evidence of her actual value than the conflicting opinion of the experts*, more or less friendly to the owner, who put her value at from \$8,500 to \$30,000.”

The United States Supreme Court in a number of cases refers to expert testimony. From *The Conqueror*, 166 U. S. 110, 130, 133; 51 Law Ed. 937, 946, 948, we quote as follows:

“In short, as stated by a recent writer upon expert testimony, the ultimate weight to be given to the testimony of experts is a question to be determined by the jury, and there is no rule of law which requires them to surrender their judgment or to give a controlling influence to the opinion of the scientific witnesses.”

Evidence of an actual sale to establish the value of timber was admitted by this court in the case of *Lynch vs. United States*, 138 Fed. 535, in which Judge Cushman represented the appellee.

The District Court for the Northern District of California in *Spring Valley Water Works vs. San Francisco*, 192 Fed. 137, 165, uses this language:

“Evidence of actual contemporaneous sales of portions of the very property in question seems to me to be useful and to afford a valuable guide, where the opinions of the experts are so irreconcilable.”

One of the best statements of the principle is found in the following language from *Ommen vs. Talcott*, 175 Fed. 261, 267:

“The value of a thing is what under normal conditions it will sell for, and the best evidence of that, when you are sure that the sale is under such conditions, is the actual sale itself.”

In *The Granite State*, 3 Wall. (70 U. S.) 310,

18 Law Ed. 179, 180, the United States Supreme Court makes use of this language:

“We do not feel called upon to decide between the opinions of witnesses who have given their guesses on the subject of the value of this rotten hull * * *.”

In the case of *The Schooner Catherine*, 17 Howard (58 U. S.) 170, 15 Law Ed. 233, 234, on the question of the cost of repairs to a schooner which had been in collision the Supreme Court held that where the cost of repairs can be proven the testimony of experts to show what such repairs ought to cost is not admissible.

It was absolutely unnecessary for appellants to brief for this court nothing but the testimony of their expert on real estate values when the record is replete with actual transactions, some of which were obtained by appellants and some by the appellees. This evidence we will now brief for the court.

First. Of the Real Estate in Town of Sequim.

On May 1st, 1911, there was platted eighty acres as the central plat of Sequim (Exhibit 34). Blueprints of the original plat were made and distributed, on each of which was indicated the price of each lot and sub-lot. None of the property was sold until 1912 (Record, p. 581), most of the sales occurring in the year 1913 (Record, p. 557). In no instance was a lot sold at a higher price than that

placed upon it, the sales being made on terms of \$10.00 down and \$10.00 a month (Record, p. 557), except where the sales were made for cash, when the price was reduced below that which is marked on the exhibit (Record, p. 557). So that the prices shown on exhibit 34 are actually greater than the market value of the property, and as these sales continued up to within a month or two of March, 1914, (Record, p. 581) a comparison between the prices of the property marked on exhibit 34 with the 1914 assessment is more than favorable to appellants.

A comparison between the prices at which this property was sold on time in 1913 and 1914 and at which it was assessed in 1914 follows:

Description of Property.	1914 (Exhibit 32) Assessed Valuation.	1914 (Exhibit 34) Sale Price 1913 &
Block 1.....	\$1,540	\$3,800
Block 2.....	1,340	2,600
Block 3 (less lot 24 reserved)	1,500	2,450
Block 4 (less lots 1, 2, 4, 21 reserved).....	1,200	2,350
Sub-Lot 5.....	500	1,000
Sub-Lot 4.....	500	1,500
Sub-Lot 3.....	500	1,200
Sub-Lot 2.....	500	1,200
Sub-Lot 1.....	500	800
Sub-Lot 10.....	500	1,000
Total.....	<hr/> \$8,580	<hr/> \$17,900

This is a 48 per cent assessment. (Sub-Lots 6, 7, 8, and 9 were replatted as Sprague's Addition and as Park Lane Addition and are valued by defendants' expert real estate witness, Mr. Keeler, in Exhibit 33.)

In February, 1914, just prior to the 1914 assessment, there were 38 lots in this Central Plat of Sequim which were unsold, consisting of one whole block and some scattering lots. Mr. Keeler contracted to buy them at \$100.00 per lot, paying 5 per cent down (Record, p. 581). These 38 lots thus contracted for \$3,800.00 are assessed in 1914 for \$2,210.00, which is a 58 per cent assessment on the contract price. In other words, platted property in a town of 450 inhabitants (Record, p. 553) sells at the rate of \$800.00 per acre and is assessed at the rate of \$443.00 per acre (See Exhibit 32). These are the actual sales of an entire addition by the dedicator of the plat who sells the property on the market as a business proposition, which property the general public purchases at or below the owner's figure. This plat covers more than a third of the platted property in the town. The statement of the facts is sufficient argument.

The southeast corner of the Central Plat of Sequim is the center of town and the property farthest away from that was not platted into build-

ing lots, but into five-acre tracts (less the portion dedicated as streets). That was likewise sold on contract, one piece selling at the rate of \$300.00 per acre, one at the rate of \$160.00 per acre, the prevailing prices being at the rate of \$210.00 and \$253.00 per acre for the other ten sub-lots. They were sold on contract at these prices (Record, pp. 581-582). Three of the contracts were forfeited by the purchasers. These sub-lots are assessed at the rate of \$105.00 per acre.

All the rest of the townsite of Sequim (as well as many pieces of surrounding property) was valued by Mr. Keeler in Defendants' Exhibit 33. His valuation of all other real estate in Sequim in March, 1914, is \$49,805. The 1914 assessment of this property as shown on exhibit 32 is \$28,845 which is a 58 per cent assessment, according to the judgment of this witness.

In making Exhibit 33, the Central Plat of Sequim was not included because the same prices rule today on such lots in it as are changing hands and those values already appear in Exhibit 34 (Record, p. 582). Mr. Keeler and Mr. J. A. Adams (with his partner, Mr. Greenfield) are the only real estate dealers who, in recent years, have maintained an office for the sale of property in and about Sequim (Record, p. 552). Mr. Adams testifies that

very little acreage has been moving there for several years, almost nothing doing, and that there have been no sales for a year (Record, p. 699, and Mr. Keeler testified that about ten per cent of the property had been sold within four years and that he had made the sales. No man, therefore, is as well qualified to pass his opinion as the witness Keeler. He was, therefore, asked by appellees to bring into court his original records showing all his sales during the period of the last four years. He compiled Exhibit 33, which is his valuation of the property, from a consultation of these records. He so testified, and counsel for appellants brought out from the witness that the original records of those sales were with the witness in the court room and were available for cross-examination (Record, pp. 555-556). But appellants were not interested in the cross-examination of this witness for the purpose of eliciting the truth.

At the close of Mr. Keeler's cross-examination counsel for appellants was again reminded that the records of the witness were in the court room and available for cross-examination (Record, p. 582).

Now we have established a standard of value for one class of property. Not by the testimony of a non-resident operator, based upon nothing, but by testimony of actual sales in the open market and an

exhibit prepared from the original records of the witness who made the sales. The testimony of the witness Keeler, therefore, accords with the market value as shown by the actual transactions themselves, Keeler's opinion, and the sales in the market are, in turn, absolutely in accord with the assessment. The only witness produced by appellants to overturn the assessment as to real property was the witness Ware. Let us now compare his testimony with these actual sales.

The Central Plat of Sequim, which we have just been considering, lies in the South half of the Northeast quarter of Section 19, Township 30, Range 3. In his direct examination appellants asked Mr. Ware the value of unimproved land in this section in 1914. He first said from \$50.00 to \$75.00 per acre, then remembered that Sequim was in the East half of this section and that the values would, therefore, be increased. For this reason he put a higher value on the East half of section 19 and said that the value of \$50.00 to \$75.00 per acre would stand for the West half of the section (Record, p. 141). He was given permission, upon leaving the witness stand, to prepare a statement out of court of his valuations on the acreage (Record, p. 142). He did so by writing in red ink his estimate of valuations on Exhibit "R". This exhibit had previously been

prepared for the purpose of showing the assessment on the acreage. Consequently, when Mr. Ware at his leisure started to put his value on the land in Section 19 he found, by looking at the figures in front of him, that the assessment of the property as shown on Exhibit "R" was more than fifty per cent of the amount of his valuation, and he thereupon valued the unimproved real estate in the West half of Section 19 at from \$50.00 to \$300.00 per acre instead of from \$50.00 to \$75.00 per acre, as he had just finished testifying. Now, compare this valuation by Mr. Ware with the actual sales in the market. We have already seen that platted property divided into 5-acre tracts in the Central Plat of Sequim, a half a mile nearer the center of town, sold on the actual market at from \$210.00 to \$253.00 per acre, on contract, at \$10.00 down and \$10.00 per month. And three of these contracts were forfeited. By what process of legerdemain does property a half a mile farther out of town increase in value fifty per cent except under the gentle influence of a perusal of the assessment which the so-called expert was hired to defeat? Nor is this discrepancy an isolated instance. In the course of the argument, which now follows, we will show the same relation between the excessive valuation of this witness and the actual sales on the market of the identical prop-

erty, in improved property, in unimproved acreage, in Port Angeles residence property, and in Port Angeles business property time and again. It appears from Exhibit "R" that the witness Ware values improved property in Section 19, Township 30, Range 3 at from \$125.00 to \$250.00 per acre in 1912, and at from \$200.00 to \$400.00 per acre in 1914. This value does not include the houses and barns but is for the lands alone (Record, p. 141). Indeed, the assessed valuations which are shown on Plaintiffs' Exhibit "R" refer solely to the land without the houses, barns, fences, and other fixtures, except in those instances where the improvements are shown separately (see pages 3 to 10 of Exhibit "R"). One of the recent sales shown in the record was of a 10-acre tract in the Northeast quarter of the Southwest quarter of this same section 19 which was bought by T. H. Adams for \$900.00. This 10-acre ranch adjoins the corporation (Record, p. 702). At the time of sale there was on the property a two-room house and a chicken house. The bare land is assessed in 1914 for \$60.00 an acre, sells at the rate of \$90.00 per acre, including a two-room house and a chicken house, and is valued by Mr. Ware at from \$200.00 to \$400.00 per acre.

Passing now from the property in the town of Sequim to the agricultural lands about Sequim and

in what are known as the Dungeness Bottoms, we will find that the fixing of values for this class of property is more difficult. The witness J. A. Adams, examined by the plaintiffs, testifies that he is familiar with the sales that have been made about Sequim and Dungeness. That he had a real estate office but has done no business there since he has had it. That he knows of no sales of agricultural land about Sequim within the last year; that there have been very few in the last few years, "almost nothing doing" (Record, p. 699). Then he describes all the sales of land in that vicinity of which he has any knowledge. He is asked if he recalls any others and answers, "No I do not know of any others now. There has been very little changed hands here in the last two years."

"Q. How about over Dungeness way?

"A. I do not know of any piece there that has changed hands in the last two years, unless it would be that Toby land * * *. Mr. Dick there sold it."

* * * * *

"Q. You don't know of any other sales around that community of Dungeness?

"A. I do not."

(Exhibit DD, p. 702).

Mr. Keeler testifies that in the list he made up, plaintiffs' Exhibit 33 (Record, p. 556) just a few of the parcels represent actual sales with which he is acquainted, and that possibly ten per cent of all the

property which he lists has changed hands in the last four years (Record, p. 559).

It will be seen, therefore, that there is much less data available upon which to form an accurate judgment of the value of this class of property than of the value either of Sequim or of Port Angeles lots. With the latter two classes of property inquiry among persons informed on the subject might elicit sufficient knowledge of actual sales and market conditions to form a reasonably sound judgment. But where the data is scant and instances of sales from which to form an accurate opinion are few, it is most difficult for a non-resident witness to form an accurate judgment. The record indicates the peculiar manner in which this non-resident was qualified as an expert witness on the value of real estate in the East end of the county. He testifies that he is familiar with the values of agricultural lands "to a certain extent" (Record, p. 141). He stated that he had been in the real estate business in Clallam County for twelve or thirteen years. Did not reside there all the time but was doing business there and had occasion during that time to keep acquainted with the buying and selling of agricultural lands, and states that he was familiar with the market value of agricultural lands from 1912 to 1914 (Record, p. 141). He moved to Seattle in the

spring of 1907 and returned to Port Angeles in the winter of 1912 and '13 and moved his family there in the spring of 1914 (Record, p. 143). But at no time does he ever testify that he has bought or sold property in the vicinity of Sequim.

While using his testimony as a basis upon which to overturn the assessment, the plaintiffs had ample opportunity in other ways to inform themselves of the actual values in order to substantiate, upon the cross-examination of the County's witnesses, the values to which Mr. Ware attempts to testify. In addition to the hearsay testimony of this non-resident expert, it appears that one K. O. Erickson (either with or without compensation, it matters not) performed detective work for appellants. This man has resided in the county for many years. Was chairman of the Board of County Commissioners and Commissioner from the western district of the county when the assessment for the year 1912 was made. In the bills of complaint he is designated, not by name but by title, and is specifically exempted from the charge of participation in the conspiracy (Record, p. 13). He approached the witness Keeler on behalf of appellants and attempted to secure from him a letter offering to sell the farm of Frank Lotzgesell at an excessive valuation, for the very evident purpose of spoiling both Keeler and Lotz-

gesell as witnesses upon the subsequent trial (Record, pp. 549-551). It sufficiently appears, therefore, that this man was in a position to have obtained accurate knowledge of the sales of property in the county. His disposition to perform such service appears from the services which he actually performed. Here, therefore, was an opportunity to have placed in the record information concerning actual sales within the county. It appears from the depositions (Exhibit DD) that Marion Edwards (a partner in the firm of Peters & Powell) spent several days in detective work at Sequim, ostensibly looking for a home. All the information regarding sales which he was able to obtain appears in the depositions (Exhibit DD).

The following are the only other sales of acreage which are shown in the testimony:

The witness Keeler testifies to a sale of a piece of improved property in Section 18-30-3 at the rate of \$125.00 an acre (Record, p. 558). The property in this section is assessed at from \$50.00 to \$60.00 an acre and is valued by Mr. Ware at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 per acre in 1914.

Keeler testifies to the sale of ten acres of improved property, being the East half of the East half of the Northwest quarter of the Southwest

quarter in Section 17-30-3, in 1912 by Walter Govin to C. E. Lonsberg, at the rate of \$110.00 per acre (Record, p. 582). This property was assessed in 1912 and 1914 at \$60.00 per acre. It is valued by Mr. Keeler at \$110.00 per acre and by Mr. Ware at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 an acre in 1914.

Mr. Keeler also testifies to a sale of ten acres, being the West half of the East half of the Northwest quarter of the Southwest quarter of this same section 17 by Walter Govin to Mr. Hamilton in 1912 for \$125.00 an acre (Record, p. 582). This land is assessed at \$60.00 per acre both in 1912 and 1914. Mr. Keeler values the property last described at \$1,000 instead of the sale price of \$1,250, because it is marshy land and has since grown up to willows. Mr. Ware, however, values it at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 an acre in 1914.

Again, Mr. Keeler testifies to the issuance of a contract of sale, (not a sale for cash) of the Northwest quarter of the Northeast quarter in Section 18 to J. A. Adams, at the rate of \$150.00 per acre (Record, p. 583).

Mr. Adams (Exhibit DD) testifies to a sale of 40 acres in the Southwest quarter of the Southwest quarter of Section 8-30-3, bought by T. H. Adams

in 1913 at the rate of \$37.50 per acre (Record, p. 700). The plaintiffs have filed no assessment covering this property.

J. A. Adams sold 20 acres in the Southeast quarter of the Southeast quarter of Section 7, on which none of the land was rocky and on which one acre was clear, at the rate of \$30.00 per acre, on five years time at six per cent interest (Record, p. 700). The plaintiffs filed no assessment for this property. Mr. Adams in 1914 sold ten acres of the same forty acres last above described. This consisted of bottom land, of which four acres was entirely clear and the balance was entirely cleared of stone, the sale being on five years time at six per cent interest, at the rate of only forty dollars per acre (Record, p. 701).

In 1910 Ed Guerin bought forty acres in Section 17 at the rate of \$35.00 an acre and bought another forty acres five years ago at the rate of \$40.00 an acre. "That is all clear" (Record, pp. 708-9). This land was assessed in 1910 at from \$25.00 to \$50.00 per acre for the improved land, which again is greater than a fifty per cent assessment.

Ray Hamilton bought ten acres, being the West half of the East half of the Northwest quarter of the Southwest quarter of Section 17-30-3, in 1913 at the rate of \$150.00 an acre. This land was assessed in 1912 and 1914 at the rate of \$60.00 an

acre, and is valued by Mr. Ware in 1914 at the rate of \$200.00 per acre. The land has been offered for sale at the price Mr. Ware puts upon it, but the owner has been unable to sell it at that price (Record, p. 709).

About two and a half years prior to the time of taking the depositions Mr. Adams sold a piece in the Southeast quarter of the Northeast quarter of Section 17 for \$25.00 an acre, on five years time at six per cent. This unimproved land is assessed in 1912 at \$15.00 per acre. In 1914 the new grade acreage books were available to the assessor and the land is assessed at from \$10.00 to \$25.00 per acre. It would seem that the owner of this piece of property might better claim a conspiracy against himself on the part of the assessing officers. Mr. Ware does not attempt to put a value upon this piece of property (Record, p. 712).

In the spring of 1912 present County Commissioner, James Dick, bought 149 acres in the Abernethy Donation Claim for \$6,500, which was at the rate of \$44.00 per acre. This land was improved and in cultivation. Mr. Dick took the crop off of it and sold the land that fall for \$7,500, which is at the rate of \$50.00 per acre. The property was highly improved, including a house, barn, water system, pumping plant, etc. (Record, pp. 667, 670).

This piece which sold twice in the open market in 1912, is assessed in 1912 and 1914 at \$30.00 per acre, which is a sixty per cent assessment on the highest price it brought in the market, but Mr. Ware values the bare land in 1912 at \$125.00 per acre and in 1914 at \$150.00 per acre, without any improvements. In other words, Ware's 1912 valuation is two and one-half times and his 1913 valuation is three times the highest price which the land ever brought with all improvements, and Ware's valuation is on the basis of the land itself without the buildings.

At this point we desire to caution the court against a misleading factor in plaintiffs' Exhibit "R". In every case on that exhibit where the assessment of the land is given and the assessment of the improvements is not shown, it is the assessment of the bare land which is referred to. But in every instance where the witnesses speak of the land being held at a certain price per acre, that price includes the improvements. That is true in the testimony of Mr. Keeler. Mr. Adams testifies that the land in that section can be bought "without much improvements on it" for \$200.00 an acre. Again, in answer to a question by Mr. Edwards he says, "I told you the other day that there was ten right down the road here, and one has got improve-

ments'' (Record, pp. 707-8). In plaintiffs' Exhibits U and V, the photographs by which Mr. Keeler is trying to interest a purchaser in certain of this property, the lands to which he refers are all improved.

The Roy Stone place, to which Keeler refers in plaintiffs' Exhibit "U" (Record, p. 559), is improved land with a modern house, well finished, up-to-date, a barn, pumping plant, concrete milk house, private lighting system and other improvements to compare. The whole thing, land and buildings, is offered at a price of \$200.00 per acre. The witness Keeler values the bare land at \$125.00 an acre and the bare land is assessed at from \$60.00 to \$75.00 an acre (Record, p. 560).

At the time when former County Commissioner K. O. Erickson, in his detective work for appellants, was attempting to spoil Mr. Keeler and Mr. Lotzgesell as witnesses in the contemplated law suit, he approached Keeler ostensibly to purchase a farm. Keeler offered Erickson the Ward place, consisting of 149 acres, for \$15,000 or at the rate of \$100.00 an acre for the property together with the buildings thereon. The total price for the property was \$20,000, which included all of the live stock, tools, implements, 19 cows, hay, crop in the barn, and all improvements, the personal property being figured

at a valuation of \$5,000 and the real estate and improvements being figured at \$15,000 or at the rate of practically \$100.00 per acre (Record, pp. 549-550).

The instruction, however, which plaintiffs had issued to Erickson apparently did not contemplate the obtaining of accurate information or the establishing of the real values of the property in the East end of the county. It is apparent that the instructions to Erickson contemplated solely putting Keeler and Lotzgesell in a hole.

The transactions above described are the only transactions in real estate in the entire eastern end of the county which are shown in this record. Every instance of an actual transaction comes from the testimony of the witnesses for appellees or in the deposition of the witness Adams. Testimony of no single transaction can be traced to Mr. Ware. As a matter of fact, he had no knowledge of a single actual transaction in the eastern end of the county and, consequently, is unable to testify to any. The sales which occurred, whether in 1912 or 1914, show no tendency toward a rising market. The testimony of Mr. Adams and Mr. Keeler both was that there had been no actual sales recently, been very little of this property changed hands in the year 1914, most of the transactions in acreage above set forth

occurring in 1912. The actual market, therefore, bears out the testimony of Mr. Keeler in reference to this real estate, "It is not worth any more in 1914 than it was in 1912. It don't sell for any more nor produce any more" (Record, p. 554). Now, bearing in mind an inactive market in 1914, let us see how the testimony of appellants' witness Ware squares with the evidence of market conditions.

Turning to Exhibit "R" he values the improved land in Section 17-30-3 in 1912 at from \$100.00 to \$125.00 an acre, and in 1914 at \$200.00 an acre. He gives the same values on the property in Section 18.

In Section 19 you will remember the excessive values which he places upon property contiguous to the townsite of Sequim—far in excess of the sale prices of property which was a half mile nearer the center of town.

The William Dick farm, in his opinion, increased in valuation from \$125.00 an acre in 1912 to \$175.00 an acre in 1914. He makes a similar increase in the McLaughlin property. He increases the Frank Lotzgesell property from \$175.00 to \$225.00 an acre. The Barrow Donation Claim from \$175.00 to \$225.00 an acre. The James Dick property and the Abernethy Donation Claim from \$125.00 to \$150.00 per acre. The Donald McInnes property from \$200.00 to \$250.00 an acre. If an expert witness is immune

from the limitations imposed by the actual market, then the testimony of the increase in the valuation of this property, which is made by Ware, can be justified. His judgment as to this increase cannot be justified upon any other basis.

In another particular Mr. Ware is contradicted by every other witness in the case. He was asked whether the values in Section 17-30-3 run fairly uniformly and answers, "Yes, sir, I should say it would run very uniform in 17." He is asked whether he could place an average valuation upon the section, and answers, "I think an average would cover it, I think" (Record, p. 141). Mr. Keeler is asked on cross-examination, "Well, does the land at Sequim Prairie run somewhat uniform as to its valuation? A. No, sir, very much the opposite. Two ten-acre tracts lying alongside each other, one will be worth double the amount of the other" (Record, p. 576).

The witness Garlick testifies: "* * * I do not know as I could give you an accurate value of lands. I do not think I could, because the land is of such variety that a person would have to be pretty well posted to give the value of it" (Record, p. 733). Again he says: "This land on the flat originally called Sequim Prairie it varies in character also. It is a hard matter to decide. Take down

on the lower part here it is more valuable than it is higher up because it is not so stony down that way, and it is more productive any way" (Record, p. 733). Again: "' * * It is a hard matter to give an estimation of the value of land where there is such a variety of land as there is in this country."

"MR. DICK: There is hardly two acres alike?

"The Witness: Yes, sir, there ain't hardly two acres alike. My opinion about the difference in land would be different from someone else's. You can't make a thorough estimation of land in the community at all and be right any way." (Record, p. 734).

The witness Seal testifies: "' * * My testimony would not be of much consequence as to my ideas of value, because there is such a diversity of land. It is in pockets and flats."

Mr. Keeler testifies to the sale of two ten-acre tracts lying side by side, one of which is valued at 25 per cent more than the other because the latter is in a sub-irrigated district, has not been cultivated and has deteriorated (Record, p. 582).

Another side light thrown on this case was the attempt by appellants to use an organization among the farmers known as the Taxpayers League as a false face for the contention that one phase of the conspiracy was the organization of this league for the purpose of reducing the assessment on the real estate in the East end of the county and increasing

the assessment on the timber lands. The testimony of actual sales on the market establishing the assessment on the real estate in the eastern end of the county as a full 50 per cent assessment withdraws support from any contention that the Taxpayers League was a monster more vicious than the ordinary rural mutual welfare organization.

(b) PORT ANGELES REAL ESTATE.

In Port Angeles an increase of 2,000 in population since 1910, and the creation of an artificial real estate market with some small basis in fact, resulted in a material change in the value of business property of that town and a much smaller change in the value of the residence property; a change which is accurately reflected in the 1914 assessment, which increases the valuation on the business property in Port Angeles 73 per cent over the valuation placed thereon in the 1912 assessment, and increases the valuation of the residence property (Taxing District No. 2), as shown on defendants' Exhibit No. 38, 23 per cent. There is no difference in the value of the agricultural property, nor of the wild lands, but there is a material difference in the value of some city real estate.

The complaint of appellants, therefore, that the value of the timber lands was increased 14 per cent on a stationary or declining market is one which is

equally open to the owners of improved and unimproved acreage, who, by the theory of the bills of complaint, are residents of the county and beneficiaries of the alleged conspiracy.

Before starting in to analyze the testimony as to the honesty of the assessment of Port Angeles real estate, let us first see what formed the basis of the charge in these complaints that the property in Port Angeles was so grossly under-assessed. The plaintiffs are non-residents and without knowledge of local conditions save from information obtained by their local agent, Mr. Earle. He was self-deceived by comparing the 1912 assessment with the 1914 market, in ignorance of any change in the conditions of the market. An investigation, which formed the basis for these suits, was conducted by Mr. Earle, counsel for appellants, and a resident of the city of Seattle. He says, "I did not know about the boom. I was in Olympia at the time that boom was taking place" (Record, p. 695). He further states that the assessment of 1912 was the assessment with which he compared real estate values at the time he commenced his investigation in February, 1914 (Record, p. 695). On re-direct examination by Mr. Peters, Mr. Earle testifies that he made no investigation as to what was the market value of Port Angeles real estate in 1912, but that

the witness Mr. Ware "stated that the real market value of Port Angeles property had not changed in his opinion during the last two years" (Record, p. 697). And so thoroughly is Mr. Earle misled by Mr. Ware that he seriously questions Mr. Haggith: "Don't you think that this talk of depreciated values is manufactured depreciation?" And more to that same effect (Record, p. 444). Being thus misguided by the ignorance of a self-styled expert who assumed to possess a competence which he lacked, these cases have been the result.

The only other investigation to determine real estate values, before the institution of this action, was the investigation which Mr. Earle testifies he made by examining the records of transfers in the office of the County Auditor of Clallam County at a time subsequent to the boom. Appellants did not attempt, upon the trial of the case, to rely upon any of the records of these transfers. In the first place, being transfers founded on an artificial market, they would not express the true value of the property. In the second place, as is the case with all boom transfers, and as the testimony shows the fact to be, most of these transfers at the excessive valuations, were not sales for cash but were sales on exceedingly small payments down and on long terms and easy payments. What other reasons there may have been

we do not know, however, appellants did not attempt, on the trial of the cause, to introduce any of the records resulting from this investigation. The unreliability of such testimony is adverted to in no uncertain terms, in *Coulter vs. L. & N. Railroad Co.*, 196 U. S. 599, 609-10, 49 Law Ed. 615, 618.

“The under-valuation in the counties, looked at from the point of view just indicated, also does not appear to have been such as to warrant the action of the court. It is not contended that a mere under-valuation would be enough. It is admitted that it must have been systematic and intentional. There is, no doubt, a natural inclination to think such an under-valuation probable when it is suggested. But what is the proof? * * * It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some, at least, of the conveyances did not report true prices, yet they furnish the chief weapon of attack. The testimony as to the Board of Equalization taking 80 per cent of the reported sales was explained by the members of the Board. It would be going very far to assume that they were committing perjury because, to another mind, the sales seemed more significant and the explanations not very good. Inequality, we repeat, is nothing, unless it was in pursuance of a scheme.”

Upon these two unreliable sources of information, the statements of Ware and the records of transfers under abnormal conditions, which appellants find not of sufficient value even to be offered in

evidence, were based the charge of fraud in the real estate assessment. At that time there had been no investigation of the shingle mills, of the banks, of Earles Mill, or of the Olympic Power Company. These latter are make-weights and after-thoughts when the real estate assessment was found to have been absolutely honest. This case is too large to burden the court with every little detail, and when it appears, as it does here, that there was no scheme to injure anybody, we need go no further than to repeat the language of the United States Supreme Court. "Inequality, we repeat, is nothing, unless it was in pursuance of a scheme."

For years Port Angeles has been a sleepy, out-of-the-way place, leading to and from nowhere, lacking commerce, lacking manufactures, lacking every element necessary to growth, except confidence in its own future, and subject to periodic and spasmodic booms such as occurred in 1912. It is no wonder that the trial court, who had been to the town, expressed a spontaneous incredulity at some of the values of Port Angeles real estate for which appellants contend.

Every sale of Port Angeles real property, of which there is any testimony in this record, was made at the following figures:

Before the boom C. C. Henry sold two lots in

Block 425 for \$120.00. During the boom he sold two more lots in the same block for \$250.00. These lots are assessed at \$80.00 and are valued by Ware at \$300.00 (Record, p. 610).

On March 13, 1914, witness G. M. Lauridsen bought Lot 2 in Block 31 of Norman R. Smith's for \$2,500. It is assessed for \$1,500 and is valued by Ware at \$6,000 (Record, p. 417).

In January, 1914, Mr. Lauridsen bought Lot 18 in Block 54 for \$300.00 from a resident of Port Angeles. This lot was assessed at \$200.00 and valued by Mr. Ware at \$900.00 (Record, p. 434).

Mr. Aldwell testifies that a great many of the boom sales were on partial payments and that, in many instances, the property is reverting to the original owners (Record, p. 180). As an instance of that he cites the sale on contract of Lot 7 in Block 34 to Howard Waterman, now Assistant Attorney General of this State, for \$3,100, of which \$1,000 was in the assumption of a first mortgage and \$1,150 in a second mortgage given back by Waterman. Waterman has offered that lot, time and again, for \$2,150 but has been compelled to let it go back to the original owners, who have for months been attempting to dispose of it at \$2,0000. The lot is assessed for \$1,100 and is valued by Mr. Ware at \$5,000 (Record, p. 180).

In January, 1914, Mr. Lauridsen bought Lots 2, 3 and 4 in Block 311 and Lot 14 in Block 309 for \$140.00. This property is assessed in 1914 at \$120.00 and is valued by Mr. Ware at \$400.00 (Record, p. 434).

In the height of the boom witness Louis Levy sold a part of Lot 7 and all of Lots 8 and 9 in Block 19 of Stratton's Addition to a man named Salmon for \$5,500 (Record, p. 588). These lots are assessed in 1914 for \$1,900. Mr. Ware values a portion of the property, namely: Lots 8 and 9, at \$7,000, a price which is 37 per cent more for the two lots than the three lots sold for in the height of the boom.

During the boom Mr. Haggith sold Lot 20 in Block 14, together with the improvements thereon known as Hanning Hall, for \$10,500 (Record, p. 441). The property is assessed in 1914 at \$3,000. The bare land, without the improvements, is valued by Mr. Ware at \$15,000 or 50 per cent more than the property sold for, with all its improvements on, during the boom. The property rents for fifty dollars a month, which is a GROSS income of less than six per cent on the boom price of \$10,500. This income of fifty dollars a month is just exactly ten per cent gross on double the assessed valuation of the property, and is four per cent gross revenue

on Ware's valuation of \$15,000 for the bare land (Record, p. 441).

Prior to the boom in 1912 the lot on which Hanning Hall stands had been for years listed for sale in the office of Mr. Haggith at \$5,000, without a purchaser being found for it (Record, p. 441). Ware testifies that in 1912 this lot was worth \$8,000, in spite of the testimony of Haggith that it went begging at \$5,000.

There is some hearsay testimony in the record to the effect that J. P. Christensen in September, 1912, bought lot 19 in Block 15 for \$9,500. This property is assessed at \$2,500 and is valued by Ware at \$9,000. This boom sale is the only one which was completed and in which the valuation of Mr. Ware approximates even the boom price.

During the boom a Mr. Glines contracted to purchase from County Commissioner J. C. Hansen the West 5 feet of Lot 6 and all of Lots 7, 8 and 9 in Block 16 of Norman R. Smith's for \$50,000, payable \$5,000 in cash and the balance in five years. This sale occurred in November, 1912, at the height of the boom. Of the total purchase price only \$17,500 had been paid at the time of the trial of these cases, three years afterward, and the terms had been made more lenient for the purchaser. Just to what extent the record does not show (Rec-

ord, p. 442). The assessment and valuation of this particular property is not shown in the record in shape to make an accurate comparison, but we believe if the record of the lots thus contracted were shown in the record the assessment would be very much lower than one-half that price, if the sale shall ever be completed.

Mr. Lauridsen bought Lots 7 and 14 in Block 172 in December, 1913, or January, 1914, for \$175.00. These lots are assessed at \$100.00 in 1914 and are valued by Mr. Ware at \$450.00. (Record, pp. 434-435.)

On December 29, 1913, Lauridsen bought from K. O. Erickson Lot 1 in Block 308, Lot 13 in Block 392, and Lot 13 in Block 120, T. W. Carter's Addition, for \$100.00. In 1914 that property was assessed at \$70.00 and is valued by Mr. Ware at \$195.00 (Record, p. 435).

In March, 1914, a coterie of men in Port Angeles contracted to buy Lot 3 in Block 31, Lot 2 in Block 16, and Lots 8 and 9 in Block 30 of Norman R. Smith's for \$15,000.00, of which only \$2,000.00 was paid. Two of the men have backed out and the lands are going back to the original owners. The property is assessed in 1914 at \$5,500.00 and is valued by Mr. Ware at \$20,000.00, or \$5,500.00 more than

the contract price of \$15,000.00, which will never be paid. (Record, p. 424.)

Several years ago a Mrs. Chambers bought Lot 7 in Block 31 for \$700.00. During the boom she sold it for \$3,200.00, \$1,600.00 cash and \$1,600.00 in a mortgage to C. B. Dodge, the man who created this boom (Record, p. 431). Dodge sold for \$5,000.00, getting \$1,000.00 in cash and putting on the property a second mortgage for \$1,000.00. When the instant cases were being tried in the lower court Mrs. Chambers' first mortgage of \$1,600.00 was being foreclosed. The property is assessed in 1914 at \$1,500.00 and is valued by Mr. Ware at \$6,000.00, which is \$1,000.00 more than the amount for which the property sold on contract at the height of the boom. (Record, p. 431.)

On July 30, 1914, Louis Levy entered into a contract to sell his corner, being Lot 1 in Block 15, for \$25,000.00, which included a new brick block, under lease, which building had been placed upon the property since the 1914 assessment was made. Mr. Levy got \$10,000.00 in cash, the balance to be paid in eight years at six per cent. The income from this property on March 1st, 1914, was a little over \$200.00 per month. The property, without the \$8,000.00 brick block, is valued by Ware at \$20,000.00 and is assessed at \$4,500.00. The assessment, of

course, does not show the brick block, which was put up in May, 1914. (Record, p. 597.)

In the summer of 1912 the witness C. C. Henry bought from the witness Ware Lots 4 to 18, inclusive, in Block 66, for \$1,275. (Record, p. 610.) These lots were then assessed at \$590.

In May, 1912, a client of Mr. Haggith bought 30 lots for \$6,200.00, Mr. Ware representing the vendor. (Record, p. 618.) These lots are now the High School grounds and lie within a block of the court house. This sale occurred at the rate of \$200.00 a lot.

Now take plaintiffs' Exhibit "C," which is the map of Port Angeles, upon which Ware placed his valuations, see the position of the High School grounds and the court house; remember that Ware was the broker who represented the seller of this property in the open market in 1912 for \$200.00 a lot, and then examine the valuation which this witness places upon lots which lie beyond it and back toward the mountains.

All this testimony was in and practically the last witness to testify was Mr. Earle. It was not until that time that defendants learned that this suit was based, in large measure, upon the statement of Mr. Ware to Mr. Earle, "that the real

market value of Port Angeles property had not changed, in his opinion, during the last two years.” (Record, p. 697.) Appellants had already introduced in evidence Exhibit “Q,” upon which appear the valuation of the witness Ware of certain real estate in Port Angeles in 1912 and also in 1914. We have added up the valuation which Ware placed upon this property in 1912 and in 1914. As shown by this exhibit, in his opinion, this property in 1912 was worth \$644,850.00, and in 1914 it was worth \$1,188,800.00. Does this look as though “the real market value of Port Angeles property had not changed, in his opinion, during the last two years?” Now that the court has seen, from an examination of all this evidence, how much higher are Mr. Ware’s valuations than the selling price of any of this property, consider the reason for it. This can best be stated in Mr. Ware’s own language:

“Q. (By Mr. Ewing). How do you arrive at the value of the pieces of property as you have put them upon this tabulation?

A. I have valued them on this basis: On the basis of a man owning a piece of property that he would sell but does not necessarily need to sell—would sell at a price that he has in his mind.” (Record, p. 143.)

Res ipsa loquitur.

Not only is this man ignorant and incompetent; not only does he possess the vice of little learning; not only does he assume an ability which a reason-

ably honest man would not care to assume; but when you come right down to the facts of the case, the fellow lived in an entirely different portion of the State during a large period of the time to which he testifies. He lived in Seattle until November, 1912. He attempts to tear apart the real estate assessment of this entire county, which was made six months before he ever became a resident of the county. Appellants realized this weakness in his testimony and tried to get him to testify that he made frequent trips to Port Angeles. The record on this point follows:

“Q. (By Mr. Peters). Mr. Ware, during the time that you were residing in Seattle in the years 1907 to November, 1912, did you have occasion, or did you go to Port Angeles?

A. Occasionally, yes sir.

Q. How frequently, about?

A. I couldn't say; sometimes I went quite often, sometimes I didn't for quite some time.

Q. About how many times a month?

A. Oh, I didn't go there—I couldn't tell you; I haven't the slightest idea.” (Record, p. 143.)

This man was about to testify that he had never been in Port Angeles as often as once a month, nor anything like as often, but caught himself just in time to prevent letting it slip into the record.

On the trial of these cases in the lower court the procedure was adopted of permitting the witnesses

to prepare a tabulation outside of court, which tabulation reflected the witness' opinion of the valuation of the property listed in the tabulation. This procedure was followed by the witness Ware and also by the real estate witnesses produced by the County. Ware placed his values of Port Angeles real estate on a tabulation which appears in evidence as appellants' Exhibit "Q." In order property to understand the exhibit, the court should remember that from the waterfront on Port Angeles Bay there is a flat, in the shape of a semi-circle, surrounded by precipitous bluffs. The important business property in the town is referred to by a number of witnesses as being that which is on "the flat." The residence property, roughly, lies on the higher plateau to the rear. The principal corner in the town is surrounded by the following property: Block 1, Tide Lands East; Block 1, Tide Lands West; Lots 6 to 9, inclusive, in Block 2 East; Block 16 of Norman R. Smith and Blocks 14 and 15 of the Townsite. This is the cream of the business property downtown. This business property is a portion of that which is valued by Mr. Ware on Exhibit "Q." The rest of the property which is described in Exhibit "Q" lies in the form of a border just surrounding the property above described. This property on the fringe of the business district is, of course, less valuable and com-

prises Blocks 17, 31, 30; a portion of Block 2 East; Blocks 18, 19, 20 and 29. Of these eight blocks last described on Exhibit "Q," Mr. Ware indicates that in his opinion the value of every lot had exactly doubled from 1912 to 1914. The downtown business property, according to the valuations placed by this witness on Exhibit "Q," increases less than 100%. In other words, the boom in the cream of the downtown business property, in Mr. Ware's judgment, increases the value of the property immediately affected less than it does the property which is farther out. Exhibit "Q" contains 186 lots on which the witness Ware places a valuation for the year 1912 and 1914. It is remarkable that he just exactly doubles the value of 113 of these 186 lots in the two years. Mr. Haggith testifies that today there is within the incorporated limits of Port Angeles two acres for every inhabitant—man, woman and child—in the town. We have examined Exhibit "C," upon which Ware has placed a value for the greater portion of the property within the town, and we make the sum of his total valuations \$5,121,367.00, and, at that, there are approximately 248½ acres within the city limits which Ware has not valued. Think of it! In a city of 4400 inhabitants, in a townsite so big that there is available two acres for every man, woman and child, the land is supposed to represent a value of over \$1100.00

per capita for each inhabitant. If the court will examine the panorama photograph of Port Angeles (Defendants' Exhibit 16) you will be unable to discover a single street improvement, grade, sidewalk, pavement, sewer, water connection or fire hydrant.

The actual sales of property within the town on the openmarket , subsequent to the boom, at prices which show that the assessment was fairly and honestly made, are all we need to urge upon the court. We have, however, tabulated the results of the exhibits prepared by all the real estate witnesses in the case. We have compared the total assessed valuation of each block with the total valuation as shown by the testimony of each of the witnesses, so that the court can compare the opinion of each witness with the opinion of every other witness. Then we have totaled the assessed valuation of the property concerning which each witness testifies, and have totaled the assessment of all that property and taken that percentage. A comparison of these percentages for the 1914 assessment will be found at the end of this brief as an appendix. It furnishes an excellent shorthand statement of the testimony of the various witnesses. The court will, we trust, examine it. And it will be found, for instance, that the opinion

of Mr. Aldwell of the value of the various blocks concerning which he testifies varies materially from the opinion of Mr. Hallahan, as shown by Hallahans' assessment of the same property. Mr. Haggiths valuations show the same thing, and so do Mr. Levy's. These three men are by far the ablest and most reliable of the five real estate witnesses. Mr. Ware and Mr. Henry being far less reliable than the other three. It will be noticed, time after time, that on any particular piece of property the judgment of Haggith, of Aldwell, and of Levy often varies materially from the judgment of the Assessor, and from the judgment of each other. But notice how machine-made is the testimony of Ware. Where Hallahans' assessment goes up, Ware's value goes up. Where Hallahan's assessment goes down, Ware's valuation goes down. Of the twenty-one blocks which Ware values on Exhibit "Q," it is remarkable that in seventeen of them the percentage between his value and the assessment is practically on a dead level. There is not a difference of five per cent. each way in the RELATIVE values which Ware places on this property as compared with the assessment, for in seventeen of these twenty-one blocks the valuation runs between 21% and 29% of the assessment. The real estate witnesses for the County, however, exhibit no such uniformity in their valuation of any particular property.

But when the total is reached, we find that in Aldwell's opinion the assessment of Hallahan was 50.7% of the value of the property. In Levy's opinion the assessment was a 49.8% assessment. In Haggiths opinion the assessment of Hallahan was a 48% assessment. In Henry's opinion it was a 54% assessment, while in Ware's opinion it was a 25% assessment.

If the valuations of the witnesses for the County had followed each other in a manner to indicate that they were machine-made, and slavishly followed Hallahans assessment, up or down, then it might well be suspected that the assessment influenced the testimony. But when you find, as you will in examining the appendix to which we refer, that the opinion of each witness for the County bear no relation to the assessment of the particular property, nor to the valuation placed upon that particular property by any other witness, but that in the end they all show the assessment of the property to have been practically a 50% assessment, there are only two explanations for the fact. One is, that the witnesses for the County intentionally perjured themselves; and the other is, that they were cognizant of the value of the property, placed their opinions upon it independently, and that they and the Assessor were competent and each performed his sworn duty.

III.

PERSONAL PROPERTY ASSESSMENT

It is alleged in the bills of complaint that appellants caused an examination of the tax rolls to be made, and they found that personal property was greatly under assessed. It was not, however, until the trial of the cases had been practically concluded that any attention was paid to the personal property assessment, except in the matter of the banks.

The attack upon the shingle mill assessment consists of the testimony of E. W. Pollock, who made an appraisement of the mills long after the appraisement made by the assessor, and whose appraisement was not the appraisement required for taxation purposes by the laws of Washington.

"All property shall be assessed at its fair value in money. * * * The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. * * *

§9212 Rem. & Bal Code. Vol. 2 (Ed. 1910).

His testimony is introduced into the record in the form of a tabulation such as was agreed upon by counsel early in the course of the trials, which is identified as "Plaintiffs' Exhibit K" (Record, page 204).

The definition of "true cash value" for assess-

ment purposes is the definition given by the courts for "market value," which was the basis for the assessment of 1913 and 1914 under the laws of Washington then in force.

The fallacy of the basis of valuation adopted by this witness is shown in the record; he disavows it himself, and admits that "market value" is less than depreciated value, which is the basis of his appraisal of the mill properties.

(The witness' testimony related solely to the assessment of 1914.)

Cross Examination.

The witness states on defendants' inquiry that he does not know what condition prevailed in March, 1914. (Record, page 200.)

The term, "depreciated value" used by the witness, is the value to the owner and taking into account the wear and tear and obsolescence, which may have occurred, if any, on machines. It means the value to the owner after allowing for what life has been taken out of a machine by use or age. In defining this replacement value they took the property in detail at the present price of material, labor and freight or other elements of value, and from that price of new production they deduct what in their opinion, is the proper amount for deprecia-

tion. They take the present cost price of new materials.

Witness gives the following illustration: If a man buys an engine for \$2500 second hand, that cost originally \$4500, they would put the price down at \$4500, and then depreciate it as they saw fit, according to the wear and tear that the engine showed, or that they could find it had been subjected to, but they would start out on the basis of its being originally a new piece of machinery.

Witness says he knows what market value means. He does not think the market value and depreciated value are the same. The market value assumes that a sale must take place to find out what a thing sells for, while the depreciated value does not make this assumption. In figuring the depreciated value, the property is left in the hands of the owner on the assumption that the property has a particular value to him which generally is greater than that of the market value, and that if the owner would want to turn the property into money he would have to sacrifice something from the depreciated value, ordinarily. Witness could not state the percentage at which he would put the market value below the depreciated value, in the case of these shingle mills. In order to do that he would have to be thoroughly familiar with the

local conditions as to the shingle market in Clallam County.

Witness admits that he is not familiar with local conditions surrounding these mills. "The market value," says the witness, "comes pretty near being a forced sale value, because of conditions, especially in the shingle and lumber business." The supply and demand of shingles, the ability of the owner to make money out of the operation of the mill, his inability to get insurance and make the investment safe—these elements all tend, he says, to make the market value. He would not consider the inaccessibility of the market serious in this case, because shingle bolts would be handy to market.

Witness admits that the market value of these mills is less than the depreciated value, which is put on them. He could not give with this comparison, any percentages.

Witness admits that a great many features enter into the market value of property, such as these shingle mills, that he did not consider in arriving at this depreciated value. He thinks the market value in 1914 would be lower than the depreciated value. The boom would only affect the market value, not the depreciated value.

"Q. Would you be willing to make any approximation of the percentage of what you think

the market value is below the depreciated value? Would you say it is as much as 25%? I am not going to pin you down. I won't embarrass you by cross examination, but I want your honest opinion.

MR. PETERS: As to what time?

MR. EWING: As to the present time first, and March 1, 1914, after that.

Q. (Mr. Peters) Do you know anything about the market value at the time, or at March 1, 1914?

A. No sir, I never heard of a sale of a shingle mill property made in Clallam County. My opinion, if I gave it at all on that, Mr. Ewing, would be based on conditions in other places, rather than in Clallam County, and on my general knowledge of conditions of the mill and shingle industries.

Q. You say, you qualify it, suppose you give it.

A. I would not want it considered as ever well studied out or anything of that kind.

Q. Well we will admit that.

A. Yes sir, I should think that 25% should come as near as any other figure to my idea at this time.

Q. This little pamphlet which you referred to in your remark to me a little while ago is entitled "The over-worked word "Value." Do you recognize that title?

A. Yes sir.

Q. Is it the same little pamphlet which you have?

A. Yes sir.

Q. And you are the author of it?

A. Yes sir.

Q. And in this little pamphlet at page 8, under

the heading at page 7, "Market Value," you use this expression: "The market value of a machine today is one price, and a year later, having been superseded by some other invention, it has only a fraction of its former value, yet the replacement cost would be the same as before." So that statement is true, isn't it?

A. Yes sir, there are conditions where that is absolutely true.

Q. It might happen then that the market value would be pretty nearly nil while the replacement value would still be considerable, as you analyzed those terms?

A. It would not be down to nil, of course, because machinery is always worth something for old iron.

Q. Using that as an illustration, the actual value might be that of junk while the replacement value might be considerable more than that?

A. While they are still using it, I do not think any machine could come down to junk value.

Q. That was between those conditions; I did not want to drive you to that.

A. That is true, to a certain extent.

Q. There might be a very great discrepancy between the market value and the replacement value?

A. Yes sir, there might.

Q. You made this further remark on page 8: "Market values of mill properties are now, and have been for some years, considerably less than the depreciated values, but if there should come a time when for several months or years the market could not be supplied with lumber fast enough to meet the demands, then the market value of saw mills

properties might for a time exceed the depreciated values."

A. That is true.

Q. But under the present condition, for the last six years, the converse of that proposition would be a correct statement?

A. Yes sir.

Q. That the market values of milling property, including shingle mill properties, would be much less than the depreciated value?

A. Yes sir.

Q. That would be true in March 1, 1914, and March, 1912, under general business conditions on the coast?

A. Yes sir. Always taking into consideration that market value is a different thing from the depreciated value."

(Record, pages 204, 205, 206, 207, 208.)

On further cross examination by defendants the witness says that his company is qualified to make appraisal of the market value of such properties as those he testified to, and if appraising property to find its market value instead of its replacement value, would inquire into the supply and demand of the article manufactured by the plant and the profit of the business, (past profits and prospective profits of the business is a line that we do not ordinarily go into), the locality and accessibility of the market and shipping facilities, the accessibility to raw material and cost of labor and all such matters

of that kind. Witness did not make that sort of appraisal in this case, did not go into these details. (Record, page 209.)

The peculiarity of his appraisalment, not assessment, is that it is based solely upon the relation of the parts of a plant to the whole without regard to external conditions foreign to that relation; in fact, it ignores entirely those factors which go to make up market value, which is the only basis of assessment for taxation purposes provided by the laws of Washington.

§9112 Rem. & Bal. Code. Vol. 2, *supra*.

In this connection, reliance is undoubtedly placed by the appellants upon the case of *National L. & M. Co. vs. Chehalis County*, 86 Wash. 483 (488), in which case the testimony of this same witness Pollock largely figured. The court in that case said, however:

“We do not want to be understood as holding that the depreciated value is a universal standard of actual or market value, and we only hold that, under the facts in the present case, the two standards are substantially coordinate.”

The true conditions surrounding shingle mills, as showing the true basis on which the assessment was made, is shown in the testimony of Mr. Hallahan, Record, page 618, *et seq.* It is impossible to read the testimony of Mr. Hallahan, showing the

true condition of these little fly-by-night shingle mills, and feel that the alleged depreciated value bears any real valuation to the market value of these small properties.

The attack upon the assessment of the Puget Sound Mills & Timber Company is made by the same witness, Pollock, whose appraisement was made during the course of the trial, and eighteen months after Hallahan's assessment of the same property (Record, p. 678, *et seq.*). Pollock ascertained the present replacement value of a complete plant in operation to show the error of an assessment at market value of a property entirely incomplete and in course of construction on March 1st, 1914. Such testimony, of course, affords no basis whatever by which to measure the accuracy of Hallahan's testimony. The assessor testified that on the 17th of March, 1914, the mill for the first time had sufficient steam to blow its whistle; on the first of March, he was on the property examining its condition at that time. That he took a memorandum—"I made that memorandum for the information of the board of equalization in 1914. I had the whole thing in concrete form so that they would not have to look over the mill unless they wanted to, or for my own information or information of anybody that would ask me questions concerning it, and for your in-

formation now (handing counsel papers).” (Record, pp. 681, 682.) Counsel for appellants then demanded some other papers which the witness had in his hand, and which it immediately transpired was correspondence with other county assessors in regard to the assessment of this mill:

“Q. They are memorandum that you made in connection with your assessment of the mill?

A. They had something to do with it. * * *

A. It is correspondence with the county assessors.

Q. Correspondence between whom and the county assessors?

A. Between myself and the county assessors.

Q. (Mr. Peters.) In regard to this same matter?

A. In regard to the assessment of mills.

Q. (Mr. Ewing.) Do you want to include any other county assessors in this conspiracy?

A. There is a good chance.” (No response.) (Record, pp. 632 to 634.)

The dearth of manufacturing enterprises within this county is sufficient explanation of an assessment by a man whose lack of familiarity with the particular task is very apparent. The good faith of Hallahan’s assessment is very apparent by his own inquiry of other county assessors with greater experience before he placed in his own assessment. Memorandum which Hallahan had from which he made this assessment ~~had~~^{and} the letters between himself and the other county assessors who advised him in the matter were in court, and upon the discovery

that the assessment had been made in absolute good faith, all further interest of appellants instantly ceased.

Great stress has been laid upon the under-assessment of banks of Clallam county. Upon this question Mr. Hansen testified:

“A. The banks in 1914, in all the years I have been on the board, they have never been mentioned amongst us, and I myself have always been of the opinion that money was not assessed, for some reason—I do not know how I got it—but the banks, for instance, if it stood there for \$3,000.00 it remained there. Its capital stock never came up for our consideration. It was not left unassessed purposely. It was because there was no rule for assessing it. I had always supposed, and I think that the other members are of the same opinion, that it was the same way all over the state. * * * (Record, p. 662.)

Q. Isn't it a fact that the rate of assessment on all the banks of Clallam county is wrong?

A. Sure, they are wrong. They were wrong. I will admit that. There is no use trying to get around it. I admit it. And I admit it because we did not know any better. Our attention should have been called to that. You had plenty of chance to call our attention to it. You have been coming down here right along; but you never called our attention to it, never once. * * * (Record, p. 663.)

Q. You thought the assessment was right?

A. That was my opinion of it, and I found out this way after you stirred up the banks of the county this way, when you went around and subpoenaed the cashiers, then I was told that

the assessment was not high enough; but that is the first I ever heard during my five years as county commissioner that they were not assessed right. * * *” (Record, p. 664.)

Witness further said it was an absolutely innocent act of the board through his inability to properly construe the act; that Mr. Earle, counsel for the plaintiffs, has been coming down to the county for four or five years, and could have set the board right if he wished. “They have always kept an attorney over us. They take good care of us; don’t fear about that.” (Record, p. 665.)

We desire to cite to the court upon this phase of the cases, the following:

“At the trial it was stipulated that about two million dollars on deposit in the banks were not assessed in 1907. The appellants contend that the failure to assess it invalidates the assessment. * * *

The omission of the assessor to assess property, under a misapprehension of the law, will not invalidate the assessment list. It is the same in legal effect as the casual omission of property through a mistake. (Citations.)”

Doty Lumber & Shingle Co. vs. Lewis County,
60 Wash. 428 (433).

IV.

ASSESSMENT OF OLYMPIC POWER CO.

In attempting to establish the under-assessment of the Olympic Power Company appellants offered in evidence a private letter (Exhibit F—Record, p. 157) in which Mr. Aldwell, the president of the company, stated that it had installed a hydro-electric plant at a cost of \$1,350,000. This letter was received over the objection and exception of respondents that it was hearsay and not a declaration of a co-conspirator, unless complainants would agree to subsequently connect up the writer of the letter as a member of the conspiracy. Appellants refused so to do and the court, with serious doubts as to its competency, admitted the letter. (Record, pp. 155-6, 174-6.) The witness subsequently testified that his plant was erected in the fall of 1910, a dam being built across the Elhwa River; that on October 30, 1912, the foundation of the dam for a distance of 90 feet went out and let practically the whole river flow through. Repairs to it were not completed until September or October, 1914. They were generating power in December, 1913, but there was so much seepage going through at that time that they were not sure that they had a dam until they made a further hydraulic fill, which was not completed until the fall of 1914. On March 1st, 1913, and also

on March 1st, 1914, the conditions resulting from the blow-out had made the property of very doubtful value. Around Port Angeles they were not optimistic. Mr. Earles and several other people told Mr. Aldwell that they did not think it would stick, and that was the general impression around there. (Record, pp. 177-8.) Of the valuation of \$1,350,000 about half a million dollars was the cost of repairing the blow-out. Deducting this \$500,000, the witness testified that "with the engineering and everything it (the plant and system) cost approximately \$650,000, somewhere around that." (Record, pp. 160 to 161.)

The witness was also interrogated about a report to the Public Service Commission of the State of Washington which was prepared in the spring of 1915 showing a valuation of the property as of December 1st, 1914. This was also admitted in evidence as complainants' Exhibit "H," under the same objection which was made to Exhibit "F," namely: That it was hearsay testimony and was inadmissible as the declaration of a co-conspirator unless complainants would assure the court that testimony to be introduced later would couple up the witness as a member of the conspiracy. In admitting the testimony the trial court stated:

"I am inclined to think there is grave doubt

about its admissibility. A case that is tried to the court that is very liable to be appealed, it is better to make a mistake in admitting too much so the appellate court can disregard it if it thinks it objectionable, than to admit too little and then have the appellate court finally set it aside and send it back to be tried all over again. I overrule the objection and admit it. I am inclined to think myself I will disregard it. * * *

Exception was taken to the ruling of the court. (Record, pp. 174 to 177.) The statement of this witness as to the pessimism of the local people on the question of the value of this property is corroborated by Mr. Hansen (Record, pp. 658-660). And there is no testimony to the contrary. If the \$500,000 which was being poured into this dam at the time of the assessments for 1913 and 1914 was wasted to "go like a milky cloud, go down the river" (Record, p. 660), the assessor certainly was justified in assessing the land the same as the surrounding farm lands and the improvements thereon as so much wasted money. To have assessed the property at that time in accordance with the values which should be placed upon it in the light of future developments would have required the genius of a seer and prophet. If the failure of the County Assessor to possess the prescience which appellants are able to exhibit after the fact, is corrupt and criminal, then the assessment of this plant must bear the

impress of fraud. Appellants suggest that the “temporary” washout of this company’s dam might excuse the assessor in making a “liberal reduction” in his assessment. An attorney who is accustomed to receive fireside equity at the hands of the courts where everybody gets a little and nobody is satisfied is the only person who would think of making such an argument. To a county assessor, however, the property must be assessed on some basis. Either it is valuable as a power plant, or it is not. And, under the concession of appellants that the County Assessor would not have been justified in assessing the property as a power plant, the “liberal reduction” which they consider he might have made can only have one other basis in honesty, and that is a valuation of the real property in the same ratio as that surrounding it.

If the appellants are unable to suggest a basis for the “liberal reduction” which they consider should have been made, how can they expect the court to be more zealous in their behalf?

V.

THE ALLEGED CONSPIRACY.

The charges of conspiracy in the bills of complaint are sought to be established principally by the

testimony of one E. H. Grasty, a resident of Portland, Oregon, who was procured by Earle & Steinert, counsel for the appellants, to go to Port Angeles in their behalf. Under the assumed guise of an investor and loan agent, he sought out a great many of the residents of the town, including most of the county officials, and interviewed them at greater or less length upon the conditions of the local real estate market. He testified that his object in going to Port Angeles, in Clallam County, in the first instance was actually to ascertain the values of real estate, and also to look into the matter of loans and investments; that his attorneys, Beebe & Whitcomb, of Seattle, had previously spoken to him about Clallam County, and stated to him that some time he ought to go there and look over that part of the country for the purpose of obtaining an investment, and that he went there for that purpose (Record, pages 233 and 234). That his mission was not to discover and establish facts, but to mislead and entrap county officials and citizens of Clallam County into what he considered damaging admissions to be used in these cases in connection with other matters about which he approached them as his real object and purpose, is abundantly established in the record by his own testimony (Record, pages 209-232). In all of his interviews with residents of Clallam County,

Grasty obtained from them statements and alleged admissions, with which they were afterwards confronted in court, by assuming to interest them in projects with which the assessment of timber lands had not the slightest connection. He directed the conversations into channels which while ostensibly referring to the particular subject under discussion, brought into them by indirection and inference the assessed valuation of Port Angeles real estate and the discrepancy between those assessed values and the prices the people were putting upon their property. The witness denies that he attempted to direct the conversation in any way (Record, pages 238 and 239), but his statement in that regard is refuted by his own testimony, where, on page 216 of the record, regarding his interview with Mr. Hansen, he testifies as follows:

“A. Yes, sir, I did. I told him I had understood that these properties were worth a certain amount of money, and that there was such a discrepancy in their actual value and their assessed value that it naturally called for an explanation from someone who knew.”

On page 225 of the record, regarding his interview with Mr. Lutz, he testifies as follows:

“I made the statement to Mr. Lutz that the assessed values of property in Port Angeles and the real values were somewhat at variance, in fact, so much so that it would raise

a question in the minds of anybody that was going to loan money on the property there of the safeness of the loan."

and, regarding his interview with Mr. Christensen, he says (Record, page 226) :

"I said, 'Do you know what this property is taxed for?' He said, 'I don't know, but it will be a very easy matter to ascertain,' which I did."

On page 231 of the record, testifying regarding his interview with Mr. Henry, he states :

*"I made it a rule to ask everybody for their tax receipts. I made it my business to ask everybody who applied for a loan to show their tax receipts in order that I might know the actual taxes they were paying. * * **
And I said to him, 'Mr. Henry, why is there such a wide difference in the assessment of the Port Angeles property, they being so low here and your being assessed at much higher rates in the timber section.'"

The manner in which Grasty always endeavored to direct the channels of the conversation into the matter of an apparent discrepancy between real and assessed values in Port Angeles real estate is shown by the testimony of the witness Babcock, record page 451, and by the testimony of the witness Hallahan, record pages 481 and 482.

As illustrated by the testimony referred to above, all of the statements made by all of the parties with reference to actual and assessed valua-

tions in Clallam County were obtained under circumstances where the attention of the person with whom Grasty was dealing was not directed except incidentally to that matter; all of the conferences had in which the matter figured at all were primarily directed to some enterprise in which Grasty's informant was directly and vitally interested, and in which he appealed to some well known trait of human nature, cupidity, civic pride and the like, as for instance, the statements he obtained from parties whom he interviewed regarding the proposed loan of forty thousand dollars for the purpose of erecting the Elks' Lodge building were incidental to the matter which was then primarily engaging the attention of the persons with whom he conversed. Some of the other witnesses he talked to were seeking him either for loans of money or sale of properties owned by them, and under such circumstances any person whose judgment as to values of property is inferentially questioned by comparison with assessed valuations as shown upon the official records will make a scapegoat of the assessor and insist that his own judgment is right and that of the assessor is wrong. Such statements do not, however, establish the fact of an erroneous assessment; they are not even of the character which would make them competent as impeaching evidence, because not made in connec-

tion with the subject of the litigation. And, as stated by the trial court in ruling upon an objection during the course of the trial, "I think the opinion the witness made at this time on oath is better than representations made for the sale of bonds and building buildings and the like." (Record, page 176).

The statements of the persons interviewed by Grasty did not establish the facts of the matters regarding which they are made—in their strongest aspects they constitute merely expressions of opinion; and in this connection it is to be noted that all of the statements with reference to discrepancies between assessed and actual valuations of property, both those contained in the letters signed and acknowledged by the persons who wrote them, and those made during the course of conversations with Grasty, to which he testified, are not of the significance attached to them, nor will they upon analysis bear the import accredited to them by the appellants in these cases, for in making such comparisons, both Grasty and the persons with whom he talked were necessarily misled by the fact that the values regarding which they made the statements were values incident to the temporary and artificial condition which obtained during the very brief period of the boom, and the assessment with

which they were compared was not the current assessment of the year 1914, but the one of 1912, made two years previously, and measured by that standard of comparison, the statements might very properly have been made in all honesty by the persons whom Grasty interviewed during the course of conversations in which the specific subject of the conversation was the matter of such discrepancies in valuations. If it were possible to ascribe to Grasty honorable motives and genuine purposes, it is easy to see how he, a resident of a foreign state (Grasty being a citizen of Oregon), could be misled by his lack of knowledge of the fact that real estate in Washington is assessed only biennially, and by the requirement of the Washington taxing laws under which the assessment of 1913 was made, that all property should be assessed at its true and fair value in money, and by his subsequent apparent discovery that one assessor in the State of Washington was disregarding the apparently plain mandate of the statute and making assessments upon percentages of actual value, unless it were explained to him that such custom universally obtained and that it had received the inferential sanction and recognition of the courts of this State. The disadvantages that he was laboring under by reason of the lack or imperfection of his knowledge is illustrated by his cross examina-

tion on page 249 of the record, and by the testimony of the witness Hallahan on page 495 of the record:—

“A. There may have been a difference between the assessed value and the real value, at that particular time, because he was looking at the 1912 assessment, and this was the year 1914.”

So that if the statements of the persons interviewed by him were made to Grasty under circumstances which would have entitled them to be properly considered as evidence in these cases, and the truth of the statements were admitted, still they would not establish the fact of either an erroneous or a fraudulent assessment upon the full showing of the actual circumstances which obtained at the time of those interviews.

It may be noted in this connection that Grasty in his testimony regarding his interview with John Hallahan, the assessor, apparently over-reached himself in an effort to be specific, because Grasty's account of his conversation with Hallahan stated on page 211 of the record is as follows: “Mr. Hallahan stated to me, he said, ‘Mr. Grasty, if I were to assess the property here *for fifty per cent.* of its real value, I would break every property owner in Port Angeles, and I have sworn to do my duty.’ ”

King's account of the same conversation is shown on page 255 of the record, as follows:

“And the question was asked by Mr. Grasty to Mr. Hallahan, he says, ‘I want to know what the assessed value of Port Angeles property has to do with the real value,’ and Mr. Hallahan replied, ‘That the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed *acocrding to its real value* it would break some of the property holders to pay the taxes.’”

Either Grasty is wrong when he testifies that Hallahan referred to a fifty per cent. valuation, or King is wrong when he said that Hallahan's statement referred to real value, or else appellants' argument is wrong where they assert that the theory of a fifty per cent. valuation upon the assessment was evolved by the appellees during the course of the trial of this case.

Grasty's account of his meeting with Hansen is shown on page 215 of the record; Hansen's account of the same meeting is found on pages 525-526. Grasty's account of his meeting with Babcock is shown on page 219 of the record, and Babcock's account of the same meeting is found on page 448. Grasty's account of his meeting with Lotzgesell is shown on pages 220-221 of the record, and Lotzgesell's account of the same meeting is shown on pages 530-531. Grasty's account of his meeting

with Lewis Levy is shown on page 222 of the record, and Levy's account of the same meeting is shown on page 589. Grasty's account of his meeting with Henry is shown on page 231 of the record, and Henry's account of the same meeting is shown on page 600. Grasty's account of his meeting with Keeler is shown on page 229 of the record, and Keeler's account of the same meeting is shown on page 551.

All of the witnesses testifying in contradiction to the testimony of Mr. Grasty regarding the interviews which he had with them denied unequivocally the statements imputed to them by Grasty regarding any fraudulent agreement, conspiracy or understanding of any sort among the county officials with reference to the assessment of property in Clallam County. Even had Grasty's testimony relating to allegations of fraud on the part of the taxing officials of Clallam County stood undisputed and uncontradicted by the very persons accused of having made those statements, the statements themselves would not have established the conspiracy. Conspiracy is a fact to be proved and capable of being proved just like any other fact.

If Grasty's testimony should have been subsequently corroborated by that of other witnesses, residents of Clallam County, who would testify

in such a way as to raise a presumption that a fraudulently high assessment of timber lands or fraudulently low assessment of other property in the county were matters of common repute and knowledge in the community, then Grasty's testimony would be entitled to some weight and consideration, but standing alone as it does, without corroboration, either specific or circumstantial, it means nothing at all. It is preposterous to suppose that men actually guilty of the fraud charged in the bills would be announcing it without reserve to strangers like Grasty in terms of such particularity as he has quoted, but assuming that they did, and that they were unreserved and open in their declarations, then the conspiracy would have become a matter of common knowledge in the county, or at least in Port Angeles and the substantiation of it could have been had by the testimony of Port Angeles citizens, none of whom were called, as noted later.

“If the construction of the quoted letters and alleged conversations contended for by plaintiffs was conceded, it would be far from clear that the county officers attacked by them spoke truthfully. The plaintiffs presuppose the dishonesty of these officials and contend that, in order to build up the Town of Port Angeles, the western part of the county was dishonestly and fraudulently discriminated against in the matter of the assessment.

As the inducement held out in his talks

with these officials by Mr. Grasty was exactly towards the same end—that is, the improvement of Port Angeles by the loaning of money on the property therein—if it be presupposed that these men would act fraudulently in the one instance, it would not be unreasonable to suppose that they would do likewise in the other.

In their relations with Mr. Grasty, the contingency of gain by reason of the statements to him was imminent, and the restraint concerning misrepresentations as to what they had therefore done as officers was remote. The burden upon the plaintiffs is to show that these officials acted fraudulently in the particular matter of these assessments, and not that they may not have been honest men at all times.

Their action in making these assessments was under sanction of an oath, while their conversation with Mr. Grasty were more in the nature of traders' talk.

Olympia v. Stevens, 15 Wash. 601."

(Memorandum Decision, Record, page 825).

The case of *Olympia v. Stevens*, 15 Wash. 601, cited by the trial court, was a case in which a property owner of the City of Olympia attempted to resist the foreclosure by the City of the lien of certain delinquent local improvement taxes assessed against his property; the defense being founded upon the allegation that the Board of Equalization had, in pursuance of an illegal combination, fraudulently raised the value of the property as returned by the assessor; that the increase of valuation was not for the purpose of equalizing the

value of the property of the City, but for the purpose of increasing its total valuation, to the end that larger indebtedness might be incurred. We quote from the decision as follows:

“To show improper action on the part of the board of equalization, evidence was introduced which tended to show that the valuation made by the assessor was nearer the cash value of the property than the valuation placed thereon by the board of equalization, and that statements had been made by three or four of the members of such board to the effect that it was necessary to place a high valuation upon the property of the city to enable it to meet necessary obligations.

It is not necessary to decide the effect of statements by the members of the board that such board would raise the value of the property beyond what was believed to be its cash value, for the reason that none of the statements proven fairly warrant the assumption that any such action was intended. The statements testified to did not show any such illegal intention. The most that they tended to show was that, by reason of the financial condition of the city, it was necessary that its property should be kept at a high valuation, and there was not a suggestion even that, for that or any other reason, it was the intention of the board to value the property at a higher sum than they considered it to be worth. But even if some of the statements would have warranted the inference that such was the intention, it was at most but a rebuttable inference, and was so clearly overcome by the positive evidence of the members of the board as to their action that a finding in accordance with such inference cannot be allowed to stand.

It will not do to convict public bodies, the

members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothesis than that of such improper action. The facts shown by the evidence, construed most strongly against the board, can all be harmonized with proper action on their part, and this being so *it must be so harmonized.* That part of the proof which tended to show that the value of the property was less than that placed upon it by the board of equalization was without force, except that, in connection with other facts, it might have had a tendency to show fraudulent action on the part of the board of equalization. No question of fact could be presented as to the value placed upon the property unless it was first shown that the action of the board in valuing it was illegal or fraudulent. In our opinion the city made out a *prima facie* case, and it was not overcome by the proof offered on the part of the defendant.” (Italics ours).

(*Olympia v. Stevens*, 15 Wash. 601, 603-605.)

Not only that such fraudulent acts and conduct on the part of county officials were not generally rumored, gossiped about, or known of in the community, but that the same did not actually exist in fact, is conclusively established by the express testimony of the respondents' witness Merrill on page 371 of the record, the witness Brown on page 439, the witness Babcock on page 448, the witness Hallahan on page 480, the witness Hansen on page 525, the witness Lotzgesell on page 530, the witness Keeler on pages 556-7, the witness Levy on

page 592, the witness Henry on page 601, the witness Dick on page 667, the witness Warren on page 670, the witness Prickett on page 671, the witness Wood on page 677, the witness Adams on pages 723-724-725, the witness Garlick on page 736, and the witness Christensen on page 752.

The political complexion of the membership of the Board of Equalization in 1912 and 1913 would raise a presumption against the possibility of such a conspiracy. In 1912 and 1913 the Board was composed of Hansen, Erickson, Lotzgesell, Hallahan and Babcock, all being Republicans except Hallahan, who is a Democrat. In 1914 the same Board was composed of Hansen, Clark (who had succeeded Erickson as the commissioner from the timber district), Lotzgesell, Babcock and Hallahan, the Board in 1914 comprising four Republicans and one Democrat. In the political campaigns which resulted in the election of the officers constituting these two Boards, vigorous campaigns both at the primaries and at the general elections were waged by opponents seeking either nomination or election of the men who were successful at the final election, and it is impossible to doubt that in the heat of political campaigns, if facts had actually existed like those charged in the bills, they would have been taken political advantage of by

one faction or the other striving for success at the polls. Of those witnesses testifying in behalf of the defendants who are not county officials, it is to be noted that Merrill is a Republican, Shields is a Democrat, Brown is a Republican and the present chairman of the Republican County Central Committee, Keeler is a Democrat, Levy has been a Democrat, a Republican and a Progressive, Henry is a Republican, James Dick is a Republican, and all the present county officials are Republicans, and yet none of the men (all of whom have been residents of Clallam County for periods ranging from seven or eight to thirty or thirty-five years) during the course of the political campaigns with which they were all familiar had ever heard such rumors as those to which Grasty testified, and they all denied that in their belief the conditions to which Grasty testified had actually existed. In addition, it will be recalled that an organization known as the Tax Payers League was sought to be saddled by the plaintiffs during the trial of these cases, with the purpose and design of influencing officials of Clallam County in the matter of the taxation of the timber lands of the county, but the testimony of Shields on page 438 of the record, of Lotzgesell on page 535, of Keeler on page 552, and of Dick on pages 666 and 667 utterly refute any such imputation, and affirmatively establish the fact

that on more than one occasion the Tax Payers League was working not in opposition to the timber interests, but in conjunction and cooperation with their representatives.

But it may be argued that it can not be expected that any residents of Clallam County will testify in such a way as to discredit any of their past or present county officials, or in such a way as to impute to them delinquencies in their official duties like those charged in the bills, that the conspiracy charged in these bills is a political conspiracy, and that it is designed in its operation particularly for the benefit of Port Angeles and the eastern end of the county whence most of these witnesses come. The allegations of the bills in this regard, and the argument which would be based upon these allegations and the alleged proof of Grasty bear within themselves their own refutation by reason of their very patent absurdity.

Such a condition as that which is conceived in these allegations of conspiracy is impossible of actual existence. The least knowledge of human nature and political conditions, particularly American human nature and American political conditions, would preclude the possibility of such close-mouthed secrecy and concerted action upon the part of a whole community as that which must

be presumed if the allegations of conspiracy are to be substantiated by the testimony of Grasty. It is impossible of comprehension that there is in the whole population of Clallam County not one single honest, upright American citizen who could and would come into court and testify that such a conspiracy as that charged in the bills did in his opinion actually exist.

At this point the observations of the Supreme Court of the United States in its decision of a tax case involving charges of political conspiracy become singularly pertinent.

“The bills allege that the board, coerced by political clamor and its fears, arbitrarily determined in advance to add about nineteen million dollars to the assessment of railroad property for the previous year, and then pretended to fix the values of the several roads by calculation. They allege that the assessments were fraudulent and void for want of jurisdiction, and justify these general allegations by more specific statements. One is that other property in the state, especially land, was valued at a lower rate than that of the railroads. * * * Demurrers to the bills were overruled, mainly, if not wholly, on the ground of the charges of duress and fraud. * * *

The dominant purport of the bills is to charge political duress, so to speak, and a consequent scheme of fraud, illustrated by the specific wrongs alleged, and in that way to make out that the taxes were void. As the cases come from the circuit court, other questions beside that under the Constitution are open, and,

therefore, it is proper to state at the outset that the foundation for the bills has failed. The suggestion of political duress is adhered to in one of the printed briefs, but is disposed of by the finding of the trial judge, which there is no sufficient reason to disturb. The charge of fraud, even if adequately alleged (*Missouri v. Dockery*, 191 U. S. 165, 170, 48 L. ed. 133, 134, 24 Sup. Ct. Rep. 53), was very slightly pressed at the argument, and totally fails on the facts. Such charges are easily made and, it is to be feared, often are made without appreciation of the responsibility incurred in making them. Before the decree could be reversed it would be necessary to consider seriously whether the constitutional question on which the appeals are based was not so pleaded as part of the alleged fraudulent scheme that it ought not to be considered unless that scheme was made out."

C. B. & Q. R. Co. v. Babcock, 204 U. S. 585, 51 L. ed. 636 (638).

In regard to the alleged conspiracy the appellants' record in this case is much more eloquent and convincing by its omissions than in its recitals, for it affirmatively appears that there *are* residents of Clallam County who are friendly enough disposed toward these appellants to come into court to testify in their behalf. The witness Rixon was their own witness—a friendly witness—a man who at the time he was testifying was, and who for fourteen months prior to that time had been, in the employ of the appellants (Record, pages 101-102), and at the time these actions were first

started on the 29th of May, 1914, was, and for eighteen months prior to that time had been, in the employ of the county as the chief engineer upon the construction of their highways under the bonding system—that would have made him an employee of the county from the month of January, 1913. A part of the charge of conspiracy in the bills is sought to be substantiated by proof that the purposes of the county officials of Clallam County in assessing the timber lands of the county disproportionately was to cast upon the owners of those lands the larger part of the burden of paying the bonds voted to construct the very highways upon which Rixon was the engineer. (Testimony of Darwin, Record, page 145; testimony of Hansen, Record, page 639; and testimony of Grasty with reference to his conversation with Keeler, Record, page 230).

If such a design as that imputed to them were actually in the minds of the county officials, and there was the same loose talk about that design and purpose that Grasty's testimony would lead one to believe, is it not reasonable to suppose that some knowledge, or at least some gossip would have reached the ears of Rixon? He was a resident of the west end of the county, among those timber lands against which the alleged conspiracy was

intended particularly to operate. If the statements and gossip about the fraudulent intent and purpose of the county officials in the matter of taxing the timber lands were so generally known and commented upon, Rixon is one of the first persons who would have had knowledge thereof, because he was engaged in the very work which was a part of the alleged object and purpose of the conspiracy. If there was anyone in Clallam County who should have known about such conspiracy as that charged, Rixon was the man, and the appellants did not ask him a single question about such a conspiracy.

The witness Earl C. Douvall could not be called a hostile witness to the appellants. He testified to timber valuations as one of their expert timber men. He is the man under whose supervision and charge these cruises which have been introduced in evidence, and which are necessarily a factor in the alleged conspiracy, were made. In 1911, 1912 and 1913 he had charge of, and was engaged in making the very cruise upon which the taxes were levied for those years (Record, page 124), a cruise of the timber which everybody knew was for taxation purposes, a cruise which kept him constantly in touch with the assessor's office, and with the Board of County Commissioners who were paying him a salary—if gossip about a taxation conspiracy was prevalent, is it not likely that some boast or

idle remark indicative of an intention to discriminate against the timber men would have reached his ears at some time during those three years? He was asked nothing about the existence of such a conspiracy in substantiation of the gossip which Grasty related.

If the witness Ware was by length of residence and familiarity with local conditions sufficiently qualified for these appellants to rest their whole proof of real property valuations in Clallam County upon his testimony, in acquiring such familiarity, is it not reasonable to suppose that some gossip or rumor or report of fraudulent conduct upon the part of the assessing officers and the Board of Equalization of Clallam County would have reached his ears? It can not be urged that he is a hostile witness, because the mathematical precision of his testimony and the machine-like regularity of his appraisements of property at fixed percentages more than the assessment thereof are altogether indicative of the most friendly attitude of mind and disposition towards these appellants. During all the time that this man Ware was on the stand, and during the entire course of the voluminous testimony that he gave, no question was asked him about the existence of such conspiracy or fraud as that charged in the bills.

If they could trust Rixon to testify honestly regarding railroad construction, and Duvall to testify honestly regarding timber valuations, and Ware to testify honestly regarding real estate valuations, couldn't they trust them to tell the truth about a political conspiracy?

One K. O. Erickson was commissioner from the west end—the timber end—of the county, and was chairman of the Board of County Commissioners from 1910 to 1912, the very period specifically covered by the allegations of the bill as the time when the conspiracy was rife—if anybody could know of fraud among county officials in the matter of the assessment and the equalization of taxes as charged in the bills, K. O. Erickson would have been the man, and it can not be said that he is an unfriendly or a hostile witness, because the record shows that K. O. Erickson was actively assisting these plaintiffs in the same class of work as that done by Grasty. Erickson is the man who endeavored in conjunction with Grasty to compromise Keeler and Lotzgesell in the matter of fixing a definite and excessive sale price for the ostensible purchase of the Lotzgesell farm near Dungeness. The details of Erickson's connection with this feature of the case are shown in the record, pages 549-550. And yet, Erickson who in the bills is exoner-

ated from complicity in the fraud, is not called as a witness at all.

In Dan Earle's testimony (Record, page 693), it appears that he had some information "secured from Mr. Horace White and Mr. John M. Bell, both of them real estate men in Port Angeles," which information was reported by Mr. Earle to the appellants. If these two men, White and Bell, had been residents of Clallam County a long enough time to justify Mr. Earle in relying upon their information as to realty values in Clallam County, is it not reasonable to suppose that they could have advised him regarding gossip or current report as to fraudulent conduct on the part of county officials in the matter of the assessment and the equalization of taxes in Clallam County? Neither of these men was called.

Is it reasonable to suppose that the appellants in these cases are so possessed of occult powers and superhuman sources of divination that they have *peculiar* knowledge and information regarding fraudulent conduct on the part of assessing officials of Clallam County which is denied to other timber owners identically situated? It appears from appellees' Exhibit 18, the colored map of Clallam County showing the holdings of all the larger timber owners in the county, introduced into the record

at page 258, and appellees' Exhibit 27, the list of larger timber companies who have paid their taxes for the years 1913 and 1914, introduced into the record at page 304, that the Milwaukee Land Company, the Illinois Timber Company, the Henry & Larson Lumber Company, Conewango Lumber Company, the Bradley Estate Company, and James W. Bradley are all owners of timber lands not in the Straits zone, the zone alleged in the bills to have been the favored zone, but in the same zones with these appellants, owning timber lands situated side by side with those of the appellants, and all have paid without protest their taxes for the years which are disputed by the appellants upon the acreages and in the amounts set forth as follows:

	Number of Acres.	1913 Tax.	1914 Tax.
Milwaukee Land Company	70,467.47	\$47,015.85	\$38,243.30
Illinois Timber Co.....	12,284.94	5,776.73	5,323.34
Henry & Larsen Lbr. Co.	17,743.27	13,715.82	9,060.50
Conewango Lum- ber Co.	8838.89	9,838.60	5,739.84
Bradley Estate Co.	17,089.01	6,504.04	5,647.74
Jas. W. Bradley.....	17,645.01	6,566.00	5,117.23

The fact that these other timber owners have paid their taxes upon the same assessment and basis of valuation as the appellants may properly be taken into consideration by the court as an evi-

dence tending to disprove fraud or even erroneous judgment of the assessor.

“Some 46 mills were assessed for the year 1913 in the same manner. Of these, nine or ten have contested the assessment. While the fact that the other thirty-six have not complained of their assessment is not evidence that the depreciated value of the appellants’ plant is its market value, it yet may be referred to as showing that the standard used was not generally, by mill owners, regarded as incorrect or unjust.”

National Lumber & Manufacturing Co. v. Chehalis County, 86 Wash. 483 (488).

Is it to be assumed that if the conspiracy charged in the bills actually existed and the fraudulent conduct alleged in the bills were actually operating to the loss and detriment of the appellants in the manner charged in the bills these other timber interests, affected in just the same way, would not have discovered and resented a system which cost them thousands of dollars yearly in taxes, and would they not now be here in court complaining if these facts asserted by the appellants actually existed? These things are more significant in their silent negation than all the weight of the most positive assertions of fact made anywhere in the record by all of the appellants’ witnesses collectively.

VI.

ANSWERS TO APPELLANTS' CONTENTIONS.

THE LAW OF THE CASES.

Much space is devoted in appellants' brief and many authorities are cited in support of arguments advanced therein with which the appellees have no quarrel. The basic propositions of law which govern these cases have been established by a long line of well-considered decisions.

If upon a consideration of the evidence the court should find the property of the appellants to be over-assessed as compared with other like property, and that such over-assessment is the direct result of a conspiracy by the assessing officers, or should there be such a palpably excessive over-valuation as to amount to constructive fraud, then the appellants are entitled to equitable relief. The law entrusts the assessment and taxation of property to the officers charged by it with that duty, and the courts will in no case constitute themselves assessing officers for the purpose of correcting mere errors in judgment; nor will they assume the onerous duty of making a re-assessment unless it is clearly shown that the assessment complained of is a result of fraud, express or constructive.

The principles to which we have adverted and

the authorities supporting them are as follows:

I.

Mere over-valuation or inequality is not sufficient to warrant the interposition of equity, and the courts will not interfere to alter an assessment unless the assessment is palpably excessive, or fraudulent, arbitrary, capricious, collusive or oppressive conduct upon the part of the assessing or equalizing officers is shown.

“The question of value is largely one of opinion, and in cases like the present the law has confided to the taxing officers authority to determine values. It is only when the board acts maliciously or fraudulently, or without affording the property owner an opportunity to be heard, that their conclusion as to values will be disturbed.”

Edison Electric Ill. Co. vs. Spokane County,
22 Wash. 168 (171).

“The mere over-valuation of property by the assessor, if he acts in good faith, and in the honest exercise of his judgment, furnishes no ground for relief in equity. For excessive assessments, unless fraud is established by the proof or may be presumed from the circumstances, equity furnishes no relief and the remedy must be such as the statute has given. * * * This is the general rule, and we think the decisions of this court are in harmony with the same.”

Templeton vs. Pierce County, 25 Wash. 377
(378).

“Where the assessing officer has exercised an honest judgment and no fraud or arbitrary

or capricious action in making the assessment is shown or can be presumed, the court will not interfere. Where it appears that the assessing officers endeavored honestly to get at the true value and there is an honest difference of opinion as to the value, the judgment of the officer is *conclusive*. If property, even if over-valued, is assessed in the same proportion as other like property within the jurisdiction of the assessing officer and the system of valuation adopted operated equally on all other property, the constitutional provision as to uniformity of taxation is complied with." (Italics ours.)

Templeton vs. Pierce County, 25 Wash. 377 *supra* (382).

"The evidence also satisfactorily shows that the assessor made reasonable effort to ascertain the true cash values and that he exercised his best judgment in fixing the same. No fraudulent, arbitrary or capricious action of the assessor is shown and within the rule of *Templeton vs. Pierce County*, 25 Wash. 377, appellants are not entitled to the relief which they seek."

Carlisle vs. Chehalis County, 32 Wash. 284 (289).

"Of course, slight or even considerable differences in valuations are not sufficient when honestly made to authorize the court to set aside an assessment."

Henderson vs. Pierce County, 37 Wash. 201 (202).

"In *Templeton vs. Pierce County*, 25 Wash. 377, 65 Pac. 553, the decisions rendered prior to that time were summarized, and the principles governing the action of the courts were re-stated. It was there said that fraud, capriciousness, or want of the exercise of an honest judgment on the part of the assessing officers

was ground for interfering with the action of the officers, if the assessment made was grossly disproportionate to the value of the property assessed, or unequal when compared with the assessments on other property of like kind; but that mere over-valuation, unless the excess was so gross as to impute fraud on the part of the assessing officer, was not a ground for interference; that the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

Northern Pacific R. Co. vs. Pierce County, 55 Wash. 108 (111).

"For the purposes of this opinion it will be assumed, but not decided, that when the question is one of quantity the same rules of law apply as when the controversy is over the value in determining the right or power of the court to review an assessment as equalized by the board of equalization. The general rule is that since the board of equalization acts in a quasi judicial capacity its findings will not be disturbed in the absence of a showing that its action was arbitrary, capricious or that there was fraud either actual or constructive."

Simpson Logging Company vs. Chehalis County, 80 Wash. 245 (248).

"In no case has this court ever interfered with an assessment of property for purposes of taxation upon the sole ground of excessive assessment, in the absence of a showing of actual fraud on the part of the taxing officers, where the difference between the assessed value and the actual value was as small as ten per cent. We conclude that we should not interfere in this case, however strong the proof might be,

as to the actual value of the property being only ten per cent less than the amount it is valued by the proper assessing authorities—that, necessarily, being a question of opinion, and there being practically no other fact upon which to raise an attribution of fraud to such assessing and equalizing authorities.”

Northern Pacific R. Co. vs. State, 84 Wash. 510 (544).

“I think it is not within the power of the court of equity to enjoin the collection of the tax simply because of an inequality in valuation; and this as well when the error arises from the adoption of the valuing officers of a wrong rule applicable to many cases as from a mistake in judgment as to a single case. The valuation as finally fixed by the proper officers or equalization board, under the law, is in my opinion, conclusive when there has been no fraud.”

Cummings vs. National Bank, 101 U. S. 153, 25 L. Ed. 903 (907).

“In nearly all the States, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, attainable. The diversity of human judgments, and the uncertainty attending all human evidence, preclude the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them—

of animals, houses, and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the Constitutions of some States is complied with when designed and manifest departures from the rule are avoided.

To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

Stanley vs. Supervisors of Albany, 121 U. S. 535 (550), 30 Law Ed. 1000.

"The law of New Mexico requires property to be assessed at its cash value. Confessedly, this plaintiff's property was assessed at fifteen per cent below that value. Surely, upon the mere fact that other property happened to be assessed at thirty per cent below the value, when this did not come from any design or systematic effort on the part of the county officials, and when the plaintiff has had a hearing as to correct valuation, on appeal before the board of equalization, the proper tribunal for review, it cannot be that it can come into a court of equity for an injunction, or have that decision of the board of equalization reviewed in this collateral way."

Albuquerque National Bank vs. Perea, 147 U. S. 87 (89), 37 L. Ed. 91.

“The testimony as to the board of equalization taking 80 per cent of the reported sales was explained by the members of the board. It would be going very far to assume that they were committing perjury because, to another mind, the sales seemed more significant and the explanation not very good.”

Coulter vs. L. & N. R. Co., 196 U. S. 605 (610), 49 L. Ed. 616.

“But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth. The board was created for the purpose of using its judgment and its knowledge.”

C. B. & Q. Ry. vs. Babcock, 204 U. S. 585, 51 L. Ed. 636.

“But we may go further, and say that, the assessment of the property of this express company having been committed by law to the board of railroad commissioners, a complaint for relief in equity is insufficient which only alleges that the valuation by the board is excessive; for, in the absence of fraud, intentional wrong, or error in the method of assessment, the finding of the board cannot be overturned by evidence going only to show error of judgment in the valuation of the property. ‘The courts * * * are powerless to give relief against the erroneous judgments of assessing bodies, except as they may be specially empowered by law to do so.’ *Cooley, Taxn.* 2d Ed. 748; *Pittsburg, C. C. & St. L. R. Co. vs. Backus*, 154 U. S. 421, 38 L. Ed. 1031.”

Wells, Fargo & Company's Express vs. Craw-

ford County, 40 S. W. 710, 37 L. R. A. 371 (375).

“The taxpayer is entitled to the honest judgment of the person or persons elected or appointed in the manner directed by the General Assembly, and a tax founded on an assessment which from corrupt and malicious motives is made excessive or is rendered unequal or unfair by fraudulent practices of the officers may be enjoined, or if the property is arbitrarily assessed fraudulently at too high a valuation a court of equity will interfere. *First Nat. Bank of Urbana vs. Holmes*, 248 Ill. 362, 92 N. E. 893. But the fact of over-valuation will not, of itself, establish fraud. It is only when the valuation is so grossly out of the way as to show that the assessing body could not have been honest in its valuation that a court of equity will interfere. *State Board of Equalization vs. People*, 191 Ill. 528, 61 N. E. 339, 58 L. R. A. 513; *People vs. Bourne*, 242 Ill. 61, 89 N. E. 690.”

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (955-956), 257 Ill. 424.

“The determinations of the value to be fixed on property liable to be assessed ‘is not, in the absence of fraud, subject to the supervision of the judicial department of the state. *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276, 56 N. E. 1049; *Insurance Co. vs. Pollak*, 75 Ill. 292; *Spencer vs. People*, 68 Ill. 510. So far, therefore, as relief was sought by the bill in this case for the reason that the property assessed was valued at too high a figure, the action of the court below in sustaining the demurrer was proper.”

Burton Stock Car Co. vs. Traeger, et al., 58 N. E. 418 (419), 187 Ill. 9.

“If property has been assessed higher than it should have been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error, and can only relieve against fraud. *Keokuk & Hamilton Bridge Co. vs. People*, 145 Ill. 596, 34 N. E. 482. The fact of over-valuation will not of itself establish fraud.”

People ex rel. Thompson vs. Bourne, 89 N. E. 690 (691), 242 Ill. 61.

“It is true, as shown by the testimony, that, although the shares of the complainant were valued for taxation at but 86.7 plus per cent, of their true value in money, they were valued higher than other personal property, but the error or inequality is not shown to arise otherwise than from a mistake in judgment on the part of the assessing officials. It would, perhaps, be more exact to say that the judgment of the assessors, in their official valuation, differs from the judgment of witnesses in their unofficial valuation, as expressed in their testimony. The differences are no greater than frequently arise between witnesses in cases on trial on questions of value. And there is no certain standard by which the court can determine which is correct. Valuations, excepting of money and of standard marketable articles, are, at best, uncertain. The influences which affect salable values are various and often complicated. Much depends upon who is the owner or vendor, as well as upon who is the purchaser. The shrinkage in the value of estates result in many instances largely from the consideration that the salable value imparted by the fact of the ownership of the deceased is gone. A thousand influences, tangible and intangible, so affect the salable value of property, real and personal, in the city and in the country, as to make its true valuation a work of exceeding

difficulty, and it is not to be wondered at, nor is it a circumstance of itself warranting an appeal to a court of chancery, that there are great inequalities in valuations for taxation. To correct these the state has provided for appeals to appropriate tribunals, whose duty it is to equalize valuations and the burden of taxation. When these are exhausted all that can be done, practically, is done, excepting in cases of intentional discrimination."

Exchange National Bank vs. Miller, 19 Fed. 372.

"In the nature of the thing, market value is largely a matter of opinion. So long therefore as those charged by the law with the duty of valuation for taxation act in good faith, the court can grant no relief."

Hillmans etc. vs. County of Snohomish, 87 Wash. 58 (61).

"It is well settled that a suit to enjoin the collection of a tax will not be entertained in courts of equity—at least, in those of the United States—in which the sole ground set forth in the bill is that the tax is illegal or excessive."

Taylor vs. L. & N. R. Co., 88 Fed. 350 (357).

II.

Courts will not constitute themselves assessing officers to correct mere errors of judgment.

This principle is closely allied and associated in the reported decisions of the courts with proposition No. I hereinabove stated. Thus, in *Andrews vs. King County*, 1 Wash. 46, the court uses the following language:

"In view of the inconvenience to the public

which will arise from any derangement in the system of the collection of taxes, the law will not regard accidental omissions or minor mistakes. Nor will courts of equity interfere to correct errors in judgment as to valuation, because, as has been well said by Judge Colley, 'value is matter of opinion, and when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred'." (Page 51.)

In *Olympia Water Works vs. Thurston County*, 14 Wash. 268, on page 274 of the written opinion, the court makes use of this expression:

"Beside, the question of valuation is a matter of opinion and cannot be reduced to a certainty by the knowledge of any one, or by any testimony that can be introduced. It must follow that valuations made by different persons would not be the same upon like property. Hence, the provisions of the constitution as to assessments being equal and uniform can best be subserved by having the valuation of all like property finally determined by the same individual or board. If an appeal from the action of the board of equalization as to particular pieces of property can be taken to the superior court, the valuation of some of the property will be finally determined by the board of equalization and of other by the superior court, and an equal valuation made less probable.

It is not doubt true, as urged by counsel for the water company, that injustice may be done as between taxpayers by the action of the board of equalization, but like injustice might follow in case the valuation was made by the superior court. The legislature had the right to provide who should finally determine the valuation

of the property of the county for the purposes of taxation, and so long as the person or board charged with that duty acts in good faith there can be no relief, though by reason of error in judgment the assessments may be unequal."

Olympia Water Works vs. Gelbach, 16 Wash. 482, was an action in which it was sought to have a court of equity enjoin the collection of taxes levied upon a valuation of property which had been increased by the board of equalization over the figures placed upon the property by the assessor, and in its opinion (page 484) the court says:

"But it seems to us that the board were entitled to rely, in a measure, upon their own knowledge and judgment as to the value of the property, and were not bound by the testimony offered, nor to keep within the values placed thereon by the witnesses. After hearing all of the testimony, it was the duty of the board to place such a value upon the property as they believed to be its just and true value, as compared with the other property in the county. While the complaint contains the general allegation that the assessed value was increased with the intent to oppress and defraud the plaintiff, and while the general rule is that, upon demurrer, the allegations of the complaint are to be taken as true, yet it is evident that they must be reasonably interpreted, and the special allegations are controlled in a measure by the whole case presented; and it appears beyond controversy that, if there was any fraud in the premises, it consisted only in placing too high a valuation upon the property, not that the plaintiff was deprived of a hearing, or that the board refused to inform itself; and the complaint also

contains the allegation that the members of the board at all times claimed and insisted that there was no intent to defraud, but that plaintiff's assessment as equalized was equal and uniform as compared with all other property in said county.

It is a well known fact that there is often a wide difference of opinion as to the values of property among persons acting honestly and endeavoring to get at the true value, and as this question must be settled somewhere, the law has reposed it in the board of equalization, and made their action final. The holding of the court in the former case that no appeal would lie, and that it was the intention of the law that the action of the board should be final, practically deprives the plaintiff of any remedy, so far as the particular act of valuing the property is concerned. It would be a useless purpose of the law to deprive parties of the right to appeal, to the end that the action of the board in such matters should be final, if the same parties have a right to institute an independent action to try the very matter which would be involved in the appeal. The allegation that the board acted fraudulently can give the case no better standing, when the only fraud alleged goes to the valuation placed by the board upon the property. It may be that there can be such action on the part of the board, fraudulent or otherwise, such as refusing to hear testimony or depriving plaintiff of notice, etc., as would warrant the interference of the courts in some manner. But there can be none where the sole question presented is whether or not the board acted under an honest belief in placing a value upon property, for this is a matter that would not be susceptible of proof. The fact that they placed a higher valuation upon the property than the witnesses placed upon it would not be

conclusive evidence, unless perchance such an excessive value is fixed that fraud must be conclusively presumed. * * *

There was room in this case for the exercise of judgment, and it cannot be said that the value placed upon the property was so entirely beyond its actual value as to conclusively show fraud, and that the board did not exercise its honest belief. There is no way of showing the state of mind of each individual member of the board when putting a valuation upon the plaintiff's property. But, even if there were, it certainly would not be a politic law that would afford a remedy in the courts in a case where the board was influenced by undue motives, and denying it in another where the board, acting honestly, should place too high a valuation upon the property."

In *Noyes vs. King County*, 18 Wash. 417 (420), the court states the principle thus:

"Upon the question of valuation the law requires the honest exercise of judgment by the assessor, and it will not scrutinize closely the various elements of value which were taken into consideration by him, unless some of them were palpably misleading and arbitrary. * * * We do not think that sufficient irregularity in the manner of listing the personal property is shown to render its assessment void, and, if not void, the valuation of the personal property made by the assessor and approved by the board of equalization is conclusive, as heretofore determined." (Citing cases.)

Again, in *Edison Elec. Ill. Co. vs. Spokane County*, 22 Wash. 168 (171), the court makes use of this language:

"The question of value is largely one of

opinion, and in cases like the present the law has confided to the taxing officers authority to determine values. It is only when the board acts maliciously or fraudulently, or without affording the property owner an opportunity to be heard, that their conclusions as to values will be disturbed."

In *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, the court thus states the proposition:

"Where the assessing officer has exercised an honest judgment, and no fraud or arbitrary or capricious action in making the assessment is shown or can be presumed, the court will not interfere. Where it appears that the assessing officer endeavored honestly to get at the true value, and there is an honest difference of opinion as to the value, the judgment of the officer is conclusive. * * * As we have seen, mere excess in valuation, in the opinion of the court, does not authorize the interference of the court. *Courts cannot convert themselves into assessors for purposes of taxation, and reassess in every case where the assessor has erred in his judgment as to the value of property.*" (Italics ours.) (Pages 381, 382.)

In the subsequent case of *Carlisle vs. Chehalis County*, 32 Wash. 284, the rule in *Templeton vs. Pierce County*, *supra*, was expressly affirmed as follows:

"The evidence also satisfactorily shows that the assessor made reasonable effort to ascertain the true cash values, and that he exercised his best judgment in fixing the same. No fraudulent, arbitrary, or capricious action of the assessor is shown, and, within the rule of *Temple-*

ton vs. Pierce County, 25 Wash. 377 (65 Pac. 533), appellants are not entitled to the relief which they seek."

In *N. P. Ry Co. vs. Pierce County*, 55 Wash. 108 (111), that portion of the decision which we have quoted above also recognizes the same principle.

In *State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663 (674), the Supreme Court of the United States, in an exhaustive and exceedingly careful opinion, states cogently the reason for the rule in the following apt language:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax. One of the reasons why a court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. These officers, and the manner in which they shall exercise their functions, are wholly beyond the power of the court when so acting. The levy of taxes is not a judicial function. Its exercise,

by the Constitutions of all the States, and by the theory of our English origin, is exclusively legislative. *Hine vs. Levee Comrs.*, 19 Wall. 660 (68 U. S. XXII, 226).

A court of equity is, therefore, hampered in the exercise of its jurisdiction by the necessity of enjoining the tax complained of, in whole or in part, without any power of doing complete justice by making, or causing to be made, a new assessment on any principle it may decide to be the right one. In this manner it may, by enjoining the levy, enable the complainant to escape wholly the tax for the period of time complained of, though it be obvious that he ought to pay a tax if imposed in the proper manner.

These reasons and the weight of authority by which they are supported, must always incline the court to require a clear case for equitable relief before it will sustain an injunction against the collection of a tax, which is part of the revenue of a State."

In *Sanitary Dist. of Chicago vs. Gifford*, 100 N. E. 953 257 Ill. 424, the court said:

"Mere differences of opinion between the assessing officers and the owner of the property or between the courts and the assessing officers will not give a court of equity jurisdiction to declare fraudulent even what such court thinks is an excessive valuation. *Burton Stock Car Co. vs. Traeger*, 187 Ill. 9, 58 N. E. 418." (Page 956.)

In *Burton Stock Car Co. vs. Traeger*, 187 Ill. 9, 58 N. E. 418, the court states the rule as follows:

"This provision of the constitution has been construed to mean that the valuation of prop-

erty for the purpose of taxation is to be ascertained by some person or persons elected or appointed by the legislature. The constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature. Hence the courts have no power to fix the valuation of property for taxation. The determination of the value to be fixed on property liable to be assessed 'is not, in the absence of fraud, subject to the supervision of the judicial department of the state.' *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276, 56 N. E. 1049; *Insurance Co. vs. Pollak*, 75 Ill. 292; *Spencer vs. People*, 68 Ill. 510." (Page 419.)

III.

The presumption in favor of regularity and legality of an assessment for taxation purposes are almost conclusive, and are not to be lightly overturned.

The presumption in favor of the regularity and legality of all of the acts of public officers, which, of course, includes the assessing and taxing officers, is concisely stated in *Meachem on Public Officers*, Section 578, as follows:

"The law constantly presumes that public officers charged with the performance of official duty have not neglected the same, but have duly performed it at the proper time and in the proper manner. In the absence of evidence to the contrary, this presumption will prevail, but it is not an indisputable one and may be overcome by countervailing evidence. Where the

rights of the public require it the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. This presumption is in accordance with the established and familiar maxim, *Omnia presumuntur rite et solemniter esse acta donec probetur in contrarium*—everything is presumed to be rightly and duly performed until the contrary is shown. The presumption is constantly indulged in support of all kinds of official action.”

This principle was expressly recognized and adverted to in *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, where, in its opinion (page 382) the Supreme Court makes use of the following language:

“The assessor and board of equalization act in a quasi judicial capacity in making or equalizing assessments. The law presumes that they have performed their duty in a proper manner. Where the rights of the public require it, the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. *Kimball vs. School District*, 23 Wash. 520 (63 Pac. 213).”

And the principle was again expressly recognized by that court in *Vancouver Water Works Co. vs. Clarke County*, 55 Wash. 112, where, on page 115 of its decision, the court says:

“The assessor in placing valuations upon property for the purpose of assessment acts in a quasi judicial capacity, and the law presumes that he has done his duty in a proper manner and, as we said on another occasion, this pre-

sumption is liberal, and is not to be overturned except by clear and convincing evidence. *Northern Pac. R. Co. vs. Pierce County*, ante p. 108, 104 Pac. 178."

And, again, in *N. P. Ry. Co. vs. Pierce County*, 55 Wash. 108, on page 111, the Supreme Court makes use of the following language, expressly recognizing the presumption of law:

"that the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

In a dictum in an early case, *Olympia vs. Stevens*, 15 Wash. 601, the reason for the presumption is suggested by the following language of the court:

"It will not do to convict public bodies, the members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothesis than that of such improper action."

And as recently as the date of the decision in the case of *Hammond Lumber Co. vs. Cowlitz County, et al.*, 42 Wash. Dec. 237, the court so strongly indulged the presumption as to base its decision, adverse to the assessing and taxing officers of the county, exclusively upon the presumption, in the absence of detailed and positive proof upon the

part of those officers as to the manner in which an assessment had actually been made.

A reason for the presumption may be found in the language of the Supreme Court of the United States in its decision in *The State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663, where it says:

“As we do not know on what evidence the board acted in regard to these railroads, or whether they did not act on knowledge which they possessed themselves, and as all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the circuit court, should be better or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter.” (Page 672.)

See also

Merc. Nat. Bk. vs. City of N. Y., 64 N. E. 756,
172 N. Y. 35.

IV.

The burden of proof is upon the objecting taxpayer to establish the irregularity or illegality of the assessment.

In *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, on page 431, the court held as follows:

“There is a marked divergence in the opinions of the respective witnesses as to the value of the timber land, *but the law put the burden upon the appellants*, and the trial court who saw and heard the witnesses concluded that they

failed to meet the burden, and we are inclined to take the same view.” (Italics ours.)

And, speaking to the same point, the Supreme Court of the United States in *C. B. & Q. R. Co. vs. Babcock*, 204 U. S. 585, 51 L. Ed. 636, in a portion of the opinion which we have quoted above, used the following language:

“The board was created for the purpose of using its judgment and its knowledge. * * * Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State has confided those rights to its protection and has trusted to its honor and capacity, as it confides the protection of other social relations to the courts of law. Somewhere there must be an end. We are of opinion that, whatever grounds for uneasiness may be perceived, *nothing has been proved so clearly and palpably as it should be proved*, on the principle laid down in *San Diego L. & T. Co. vs. National City*, 174 U. S. 739, 754, 43 L. Ed. 1154, 1160, 19 Sup. Ct. Rep. 804, in order to warrant these appeals to the extraordinary jurisdiction of the circuit court.” (Italics ours.) (Page 640.)

And the same court, in *San Diego L. & T. Co. Co. vs. National City*, 174 U. S. 739, 43 L. Ed. 1154 (1160) made use of the following language:

“But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement

equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless a case presents, *clearly and beyond all doubt*, such a flagrant attack upon the rights of property under the guise of regulations as to *compel* the court to say that the rates prescribed will *necessarily* have the effect to deny just compensation for private property taken for public use." (Italics ours.)

V.

The proof required to overturn an assessment must be clear and convincing.

Doty Lumber & Shingle Co. vs. Lewis Co., 60 Wash. 428.

C. B. & Q. R. Co. vs. Babcock, 204 U. S. 585, 51 L. Ed. 636.

San Diego L. & T. Co. vs. National City, 174 U. S. 739, 43 L. Ed. 1154.

Carlisle vs. Chehalis County, 32 Wash. 284 (289).

"We find no substantial evidence in the record to indicate that the board of equalization acted arbitrarily or fraudulently when it increased the values as returned by the assessor. Before an assessment can be set aside upon these grounds, the evidence must be clear to that effect. *Northern Pac. R. Co. vs. Pierce County*, 55 Wash. 108, 104 Pac. 178; *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912 B. 870." *Blumauer vs. Mann*, 72 Wash. 429 (430).

"After reading carefully the appellant's abstract of the evidence, and the respondent's

supplemental abstract, and a large part of the testimony as it appears in the statement of facts, we are of the opinion that the conclusion of the board of equalization, and the judgment of the trial court, are not overcome by the testimony in the record. The board of equalization acts in a quasi judicial capacity in making or equalizing assessments, and the evidence to overthrow its conclusions must be clear. *Templeton vs. Pierce Co.*, 25 Wash. 377, 65 Pac. 553." *National Lumber & Manufacturing Co. vs. Chehalis County, et al.*, 44 Wash. Dec. 347 (351).

"Proof of fraud or discrimination must be clear and convincing to warrant interference by courts of equity in matters of taxation. 5 *Pomeroy's Eq. Jur.*, Section 360." *Sanitary Dist. of Chicago vs. Gifford*, 100 N. E. 953 (955), 257 Ill. 424.

VI.

Upon an alleged inequality of assessment the test must be a comparison between the property assessed and like property of similar character, similarly situated, and of similar value by reason of similar use.

The proper test has been established by numerous decisions of the courts of Washington and other states. Thus, in *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, the court says:

"If property, even if over-valued, is assessed in the same proportion as other like property within the jurisdiction of the assessing officer, and the system of valuation adopted

operates equally on all other property, the constitutional provision as to uniformity of taxation is complied with." (Page 382.)

In an early decision in this state, *Lockwood vs. Roys*, 11 Wash. 697, the court, advertng to topographical similarity, or rather topographical differences, as affecting the value of property, has this to say:

"Town lots, especially in this country, are as much articles of merchandise as any species of property, which can be mentioned, and they do not necessarily bear any relation to each other in value. Lots on one side of a block may be very valuable and very desirable on account of their topographical situation, while those on the other side of the block, or even immediately alongside, might be comparatively worthless for the same reason." (Page 700.)

In *Vancouver Waterworks vs. Clarke County*, 55Wash. 112, the plaintiff sought to show an inequality in assessment by making a comparison between two tracts of land containing respectively 9.27 acres and 11 acres, upon which were located the springs which furnished the supply of water that the plaintiff, a waterworks company, distributed to its customers, each of which tracts was assessed at five thousand dollars (approximately five hundred dollars per acre), and other lands in the vicinity of its own tracts which were assessed at from fourteen to

thirty-two dollars per acre, two or three of which contained springs of a capacity equal to those belonging to the plaintiff, and so situated that they could be similarly used, and, speaking of this attempted comparison, the Supreme Court says:

“It is no evidence of over-assessment to show that land in the vicinity of appellant’s land is assessed for a less amount than is the appellant’s land, without showing that they are alike in character, and are in demand for the uses to which the appellant’s land is devoted. For this reason land valuable for ordinary farming purposes cannot be justly compared for assessment purposes with land containing springs which are used to supply a city with water. It is, therefore, no evidence at all that appellants’ lands are over-valued to show that farming lands surrounding it are assessed at a much less valuation. The appellants’ lands do not derive their value from their use for farming purposes; neither are they being so used. Nor is it evidence that they are over-assessed to compare the amount at which they are valued with the assessment put by the assessor upon lands containing springs, without showing that the springs are in demand for a use like or similar to that for which appellants’ springs are used; but of this there was no evidence at all. The witness merely said that the springs could be used for furnishing water to Vancouver; not that there was any demand for their use for that purpose, or for any other that made them of value. This, we think, too remote to afford a basis of comparison.” (Pages 114, 115.)

Similarly, in *N. P. R. Co. vs. Pierce County*, 55 Wash. 108, the court stated the contention of the

parties and its own conclusions in the following language:

“The appellant, however, sought to prove its case by showing that the property was grossly over-valued as compared with its real value and the assessed value of like property of another owner in the same situation. To that end it showed that the property of the Puget Sound Flouring Mill Company, which owned 1.8 acres in the north part of block 71, was assessed at \$32,400, or at the rate of \$18,000 per acre, while its own part of the block, consisting of 2.24 acres, was assessed at \$56,300, or at the rate of \$25,133 per acre. It showed furthermore, that its holdings in these several blocks, outside of its right of way, had been assessed at amounts ranging from \$25,133 per acre in block 71, to something over -39,000 per acre in block 67, whereas its tax commissioner testified that a fair average value of the entire tract was -10,000 per acre. It appeared also that the assessor purported to assess the land at only sixty per cent of its actual value.

On the other hand, the county put in evidence testimony to show that the blocks were chiefly valuable because of their situation, covering as they do the principal water frontage of the city of Tacoma, and being desirable for docks, wharves, and warehouse sites. It also put upon the stand four witnesses who qualified themselves to testify as to the value of the particular tracts. One, a Mr. Hellar, placed a valuation on the property substantially in accord with that appearing on the assessment rolls; another, a Mr. Miller, valued the property at from \$50,000 to \$80,000 per acre; and the two others, a Mr. Mettler and a Mr. Railsback, placed a valuation thereon of from \$75,000 to \$100,000 per acre. * * *

Tested by these principles, there would seem

to be no cause for interference with the assessment complained of here. There is no direct evidence of fraud, capriciousness, or want of an exercise of an honest judgment on the part of the assessor, and the presumption of fraud that might arise from the fact that the railroad's property is assessed at higher valuation than the similar tract owned by the Puget Sound Flouring Mills Company is not conclusive of over-valuation, in the light of the evidence as to values given by the witnesses." (Pages 110, 111, 112.)

In *Collins vs. King County*, 80 Wash. 251, the complainant sought to make a comparison between his property located upon Second Avenue South, south of Yesler Way, in the City of Seattle, with other property fronting on Second Avenue between Pike Street and Yesler Way, north of Yesler Way. The lower court sustained the demurrer to the complaint, and upon affirming the decision of the lower court, the Supreme Court said:

"The complaint does not show that the assessment is not uniform or proportionate to the assessment of *adjacent* property, nor that, as compared with such property, the assessor has capriciously or arbitrarily determined the real and assessed value of appellants property. * * * It is not a sufficient showing of arbitrariness or fraud to compare appellants property below Yesler Way with the properties between Pike Street and Yesler Way, as to their rental values or the relation between their rental income and assessed valuation. Many proper considerations might determine the rental value of property on Second Avenue between Yesler Way and

Pike Street that do not enter into the rental value of property on Second Avenue South, and the showing of such values of such properties is not a showing of actual or constructive fraud.” * * * (*Italics ours.*)

The complaint makes no attempt to compare the assessment of appellant with the assessment of other *like property similarly situated*, but makes its only comparison between the rental and assessed value of appellants property on Second Avenue South and the rental and assessed value of property on Second Avenue between Pike Street and Cesler Way, which is not like property similarly situated.” (*Italics ours.*) (Pages 252, 253, 254.)

And in *Dickson vs. Kittitas County*, 42 Wash. 429, the test was properly applied and the assessment of the complaining tax payer reduced.

In *Sanitary District of Chicago vs. Gifford*, 100 N. E. 953, 257 Ill. 424, *supra*, the tax payer, the owner of lands occupied by a power plant and equipment, sought to make a comparison between its lands so occupied and adjoining lands valuable principally for farming purposes, and, stating the contentions of the tax payer and its decision thereon, the court makes use of the following language:

“Counsel for appellant argue that the value of its real estate found by the board of review, as compared with other real estate in the neighborhood, is so excessive as to be fraudulent. If the lands of appellant not occupied by the power plant or main drainage channel or its equipment, and only available for farming, were

separately assessed at the values alleged in the bill, such values, as compared with the assessed values of other land in the vicinity, as alleged in the bill, considered only for farming purposes, would doubtless be grossly excessive. But there is nothing alleged in the bill to show that the land of appellant available for farming purposes was so separately valued and assessed. On the contrary, we conclude from the allegations of the bill that the power plant, with its equipment, and all other works of the sanitary district, were assessed together with all the other property of said sanitary district in the said township. This being so, the farm land value would furnish no basis for a fair comparison of the land value. If appellant desired to have its land which it alleges to be farm land assessed separately from the rest of its property, it would have furnished a description of such land to the proper officials before the assessment was made." (Page 955.)

VII.

(a) The assessment of the property of others at a lower proportion of its value than that of a complaining tax payer, which is not assessed at more than its cash value, as required by law, does not make the tax invalid as to the complaining tax payer unless the assessment was fraudulently made.

"The assessment of the property of others at a lower proportion of its value than that of a complaining tax payer, which is not assessed at more than its fair cash value as required by law, does not make the tax invalid unless the assessment was fraudulently made." *Doty*

Lumber & Shingle Co. vs. Lewis County, 60 Wash. 428 (page 431).

“Tested by these principles, there would seem to be no cause for interference with the assessment complained of here. There is no direct evidence of fraud, capriciousness, or want of an exercise of an honest judgment on the part of the assessor, and the presumption of fraud that might arise from the fact that the railroad’s property is assessed at higher valuation than the similar tract owned by the Puget Sound Flouring Mills Company is not conclusive of over-valuation, in the light of the evidence as to values given by the witnesses.” *N. P. R. Co. vs. Pierce County*, 55 Wash. 108. (Pages 11, 112.)

This evidence would rather indicate that the property of the Flouring Mill Company was under-assessed than that the railroad’s property was over-assessed.” *Ibid.*

Northern Pacific Railway Co. vs. The State of Washington, 42 Wash. Dec. 271, was an action in which the Railway Company claimed an unjust and illegal discrimination against it by reason of the difference in the manner in which the assessment of its property was made by the state board of tax commissioners, and the assessment upon other kinds of property of other persons in the state was made by various county assessors in the state, and because of the manner in which both assessments were equalized by the state board of equalization. The contentions of the railway company can only be ascertained by reading the whole decision, and regarding

the alleged discrimination, the Supreme Court says:

“Our foregoing discussion, we think, leaves little to be said upon this contention, since we have determined that other property within the state was not assessed upon a more favorable basis than was appellant’s operating property for the year 1913, in view of the nature of such property as an organized entity. So far as the measure of value of appellant’s operating property as compared with the measure of value of other property within the state adopted for taxation purposes is concerned, we rest our conclusions that there has been no violation of the rule of uniformity prescribed by article 7, of our constitution, upon the grounds already noticed. Upon the same grounds we rest our conclusion that no right guaranteed by the fourteenth amendment to the Federal constitution has been violated. * * *

We are of the opinion that the mere fact that the assessing of appellant’s operating property as a unit by the state board of tax commissioners as prescribed by the law relating to assessment of railway operating property, instead of by the county assessors as other property is to be assessed under the general revenue laws, is not violative of this provision of the constitution; so long as such property is charged by the same rate of levy and its assessed value measured by the same standard as other property within the state. There is no question here involved as to the rate of levy; and we think we have already demonstrated that the measure of value applied to appellant’s operating property is the same as that applied to other property within the state for the purpose of taxation. * * *

It is not claimed that, in the assessing and equalization of the value of appellant’s operat-

ing property, there was any discrimination made by the taxing officers as between it and other railway corporations. Even should we view the allegations of the complaint as having some reference to property and the intangible value thereof other than the mere good will of private business concerns, it is apparent that the allegations of the complaint do not even, as so viewed, point with any degree of certainty to any material quantity of such property which had been assessed by the use of a different standard of value than that employed in assessing appellant's operating property; which, in any event, would render the complaint insufficient so far as this branch of the controversy is concerned." *First Nat. Bank of Aberdeen vs. Chehalis County*, 6 Wash. 64, 32 Pac. 1051; *Puget Sound Nat. Bank of Seattle vs. Seattle*, 9 Wash. 608, 38 Pac. 219. (Pages 292, 293, 194.)

In the very interesting and instructive case of *Keokuk & H. Bridge Co. vs. People*, 161 Ill. 514, 44 N.). 206, the court held as follows:

"Even if its property was assessed more in proportion to its value than other property in the township was assessed, and more than it should have been, yet it is plain there was no authority in the county court, upon the application for judgment, to either grant relief or refuse judgment, unless it was made apparent that there was fraud in the making of the assessment. Fraud is never presumed, but must be established by sufficient evidence; and especially could no presumption of fraud be indulged when the action of the assessor has been been challenged before each of the two boards of review that the law had provided for revising his assessments, and has met with their appro-

bation. And the mere fact of over-valuation does not of itself, establish fraud. *Trust C. vs. Weber*, 96 Ill. 346; *Keokuk & H. Bridge Co. vs. People*, 145 Ill. 596, 34 N. E. 482; *Spring Valley Coal Co. vs. People*, 157 Ill. 543, 41 N. E. 874.

* * * *

In the case before us, Cole, the superintendent of appellant, testifies that the bridge cost over \$500,000, but that it could now be built for about \$252,400. Of course, this latter is but the expression of the opinion of the witness, and an interested one at that. The assessor and the boards that reviewed the assessment may well and honestly have been of the opinion that the existing bridge is of a larger value than the sum last mentioned. And, as we understand the evidence, the bridge, with its approaches, is 3,092 feet in length, and of this 1,663 $\frac{1}{4}$ feet is in Illinois, and 1,428 $\frac{3}{4}$ feet in Iowa; but the east approach is 700 feet long, and the west approach only 200 feet long, and of the bridge proper 265 $\frac{1}{2}$ more feet are located in Iowa than in Illinois. It further appears that the bridge is used both for railroad purposes—the Wabash trains and the Toledo, Peoria & Western trains passing over it—and for horses, wagons and other vehicles and foot passengers. The fair cash value of the bridge is not necessarily restricted to what would be the present cost of the material and labor that would be actually used in its construction if it were now being built. The bridge, as a bridge, as a complete structure, as a property already in actual existence and in actual and profitable use, has a value other than the total of the values of the earthwork, masonry, iron, timber, lumber, and labor required in its construction. It is a property *sui generis*, has no market value, and is not affected by the principles of supply and demand; and evidence of what it did in fact cost

to construct it, or opinions of what it would now cost to construct it, do not conclusively establish its real and actual value. *Bureau Co. vs. Chicago, B. & Q. R. Co.*, 44 Ill. 229. It is property, the value of which is largely determined by its location, its surroundings, and the use that can be and is made of it. In our opinion, the evidence in this record does not establish that the part of the bridge that is in this state was assessed at more than its fair cash value. Indeed, we are strongly inclined to think that it was not assessed at more than one-half of its fair cash value. The evidence, however, shows that other property in the township was assessed at about one-third of its fair cash value. The law requires all taxable property to be assessed at its fair cash value. The assessment of the property of others at less than its fair cash value, while it may cause the taxpayer, whose property is assessed at its fair cash value, to bear an undue proportion of the public burden, will not, in the absence of fraud, affect the validity of the tax. *Spencer vs. People*, 68 Ill., 510; *People vs. Lots in Ashley*, 122 Ill. 297, 13 N. E. 556. We are inclined to the conclusion that, while the assessor did not assess the property of appellant at more than, or even as much as, its fair cash value, yet that he assessed it more in proportion to its value than he assessed other property in the township; but we find no evidence that satisfactorily establishes fraud, and justifies the conclusion that he did this from a wrong motive, instead of an error of judgment, or that the boards of review acted from improper and fraudulent motives." (Pages 207, 208.)

"Henry, J. This suit was brought to enjoin the collection of state and county taxes on shares of national bank stock, on the ground that the assessment of the taxes was in viola-

tion of the constitution of this state, as well as of the act of congress forbidding a higher rate of taxation of national bank stock than of other moneyed capital. It appears from the evidence, and the findings of fact by the court, that plaintiffs are the holders of the capital stock of the First National Bank of Brenham, which consists of \$100,000, divided into shares of \$100 each. The shares had an intrinsic as well as market value above \$100 each. The bank owned real estate, which was assessed for taxes at the value of \$15,000. The shareholders insisted upon their right to have the shares assessed at \$60 each. They were assessed at their par value, less the value of the real estate, or at \$85 each. The plaintiffs introduced in evidence the assessments of a few parties, among them of one private banking firm, and proved that the property in each case was assessed at about one-half of its true value. They contend that it was the custom of the assessor and the board of equalization of Washington county to list or assess property at a uniform valuation of about 50 per cent. of its true value. The court found that no such custom existed. This finding is assigned as error.

The evidence referred to was all that was offered of the existence of such a custom. The court correctly concluded that it was not established. Even if it had been established, it could not have properly affected the result of this suit. It appears that the appellants' property was not assessed beyond its true value." *Engelke vs. Schlender*, 75 Tex. 559, 12 S. W. 999 (page 1000).

See also

Albuquerque Nat. Bank vs. Perea, 147 U. S. 87, 37 L. Ed. 91, *supra*.

In *Mercantile Nat. Bank vs. New York*, 127 N. Y. 35, 64 N. E. 756, the court held as follows:

“The inequality which is complained of is one that is incidental to a general plan of taxation. That is to say, there is no complaint of inequality in the assessment of the taxable personal estate. It is that the taxable real estate is assessed at a different ratio of valuation from that adopted as to personal estate. I do not think that this is an inequality which can constitute a legal grievance; as would be the case if there had been an unequal valuation of the property of the same class. Underlying the governmental power of taxation for the raising of revenues is the principle, implied from the nature of our political institutions, that taxation should be equal, in the sense that there shall be no discrimination against persons, nor any classification which results in discrimination and that the common burden shall be sustained by common contributions, regulated by some fixed general rule, which operate impartially. Is this a case where that principle has been violated? I think not. A general statutory rule has been disregarded by the assessors in the exercise, presumably, of an honest and reasonable judgment, as nothing is charged to the contrary; but their action was impartial, and with reference to the whole community. What discrimination was exercised was solely as to the basis of valuation for each of the two classes of property into which all of the property of the community was divided. * * *

Equality is unattainable, and can never be but approximate.

Upon what principle will a court of equity interfere in a case where the grievance relates to the determination of a political body, acting

judicially within the sphere of its jurisdiction? Public policy is against the interference by injunction to restrain the collection of a tax, to the delay and detriment of the public business (*Railroad Co. vs. Nolan*, 48 N. Y. 513); and courts should be reluctant to grant such preventive relief when they are unable to do complete justice by causing a new assessment upon just principles. A court of equity does not sit to enforce the laws of the state, nor will it sit in review of the judgment of a political body, whose judgment, in the assessment of property for taxation, has been honestly exercised. Nor will the collection of a tax be restrained which is merely erroneous, and not void. See *Mooers vs. Smedley*, 6 Johns. * * *

How is the court to say that there has not been an equitable adjustment of the burden of taxation under the rule adopted by the board of commissioners? When assessments for the purposes of taxation are made upon principles applicable alike to all the members of a community, there is substantial equality. If equality is equity, there is no inequity in a general scheme of assessment for taxation which applies to the whole community, and discrimination against no species of property. How the plaintiff's stockholders, in behalf of whom this suit is brought, are affected individually by the application of the rule of valuation adopted, we are not informed. They may have had the assessed valuations of their personal estate reduced by the deduction of their indebtedness. The plaintiff's bank is treated like all other moneyed corporations, and its stockholders have the same privileges as are possessed by other holders of personal property. Laws 1882, c. 409, Sec. 312. The inequality of which complaint is made is one that is general in its nature. If

the plaintiff's attack were allowed to prevail, the whole assessment roll might be invalidated, and serious embarrassment might be caused to governmental operations. I do not think that the exercise of the equitable power of the court can be invoked to accomplish the subversion of a general scheme of assessment and taxation, which has been adopted by the department of government constituted for the purpose. The cases in the United States Supreme Court to which our attention has been directed as justifying the intervention of equity do not conflict with these views. They differ in essential facts. Either they relate to the statutory conditions which resulted in an injurious discrimination against a class of persons or a species of property, or to acts of assessors having a clear purpose to discriminate against shares of bank stock. * * *

Equity will go far to afford relief in cases of mistakes, or for the prevention of fraud, or to secure to the citizen the equal protection of the laws; but it is not its province to interfere with the collection of a tax in a case where the grievance assigned does not relate to some question of fraud, or of illegal discrimination, or classification" (pages 760, 761).

See also:

C. B. & Q. R. Co. vs. Babcock, 204 U. S. 589, 51 L. Ed. 636 (640).

Coulter vs. L. & N. Ry. Co., 196 U. S. 599, 29 L. Ed. 615 (618).

Fargo vs. Hart, 193 U. S. 490, 48 L. Ed. 761.

Cummings vs. National Bank, 101 U. S. 153, 25 L. Ed. 903.

In *Carroll vs. Alsop*, 64 S. W. 193, the court dis-

cussed the matter of the particular inequality complained of as follows:

“Complainant’s property, according to his bill, is assessed at 90 per cent of its actual value, and another class of property is assessed at 75, another at 60, and another at 40. The average is said to be 60. Now, to what percentage shall complainant be reduced? He has as much right to a 40 per cent valuation as to one at 60 and 75 per cent, and so has every other property owner in Shelby county. Again, it is evident that, if complainant could obtain relief under his present bill, it would still leave his property liable to be back-assessed under our statute for three years. Indeed, upon the concession made in the complaint that it is not assessed at its actual cash value, it would become at once the duty of the comptroller to cause it to be back-assessed at its actual value, so that under our system there is but one basis upon which values can be made finally to rest, and that is the actual cash value, and until that is reached no property is free from the machinery of the law designed to place it on that basis. It is well to note also that complainant in this case only compares his property with other property around him, and not with other property in other localities of the state. We have therefore in the present case a property owner who confesses that his property is assessed at less than its actual value, complaining because, in his opinion, his neighbors’ property is assessed at a still lower valuation. It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, on the

ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own. When he comes into court asking relief of his own assessment, he must be able to allege and shown that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and ask to have it raised to his own, if his is at the cash value; and in this way the courts, legislature, and taxpayers will co-operate to tax all property at its actual cash value, and to make all taxes equal and uniform, as the constitution contemplates. The actual cash value is the only practicable basis upon which taxes can be made equal and uniform, and this is clearly the constitutional provision, the legislative intent, and should be the effort of the court, as well as taxpayers. While valuations may in this way be increased, it will result in no hardship, as the rate of taxation may be proportionally lowered, and yet produce the same revenue; and when this rule is applied to all property of every class and character, whether corporate or individual, there will be no hardship, and the soundest public policy will be subserved, and the only rational and feasible basis for assessments will be reached." (Pages 201, 202.)

In an early case, *Eureka District Gold Min. Co. vs. Ferry County*, 28 Wash. 250, the Supreme Court recognized and applied the rule here contended for.

(b) A federal court will not enjoin the collection of state taxes on certain property because of the under-valuation of the other taxable property in

the state where such inequality is not the result of scheme or agreement among the taxing officers.

C. B. & Q. Co. vs. Babcock, 204 U. S. 585, 51 L. Ed. 636.

Exchange Nat. Bank vs. Miller, 19 Fed. 372 (374-5-6).

THE DUTIES OF THE BOARD OF EQUALIZATION.

On pages 78, 79 and 80 of their brief, the appellants quote to the court what purports to be Sec. 9200 of Remington & Ballinger's Code. The section as quoted, however, is not the law which governed the duties of the Board of Equalization at the time the assessments for 1913 and 1914 were equalized by the Board of Equalization of Clallam County. The section quoted in appellants' brief contains an amendment which was not a part of the law until the enactment of Chapter 122, Laws of 1915; and that amendment added to the original Sec. 9200, near the end of the first paragraph of the section, the following clause: "According to the measure of value used by the county assessor in such assessment year."

Either by accident or design, the appellants have quoted to the court, on pages 78, 79, 80 and 81 of their brief, a statute which varies in many particulars from the law in existence at the time the assess-

ments of 1913 and 1914 were equalized by the Board of Equalization of Clallam County. The law which prescribed the duties and regulated the functions of the Board of Equalization of 1913 and 1914 is as follows:

“The county commissioners, the county assessor and the county treasurer, or a majority of them, shall form a board of equalization of the assessment of the property of the county. They shall meet for this purpose annually, on the first Monday in August, at the office of the auditor, who shall act as clerk of said board, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual

whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, being a non-resident of the county in which his property is assessed, reduce the valuation of each class of personal property enumerated in Section 9128 aforesaid, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individuals who, in their opinion, have been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

The county auditor shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of county commissioners, and a copy of such published proceedings shall be transmitted to the auditor of the state, with the abstract of assessment hereinafter required.

The county board of equalization may continue in session and adjourn from time to time during three weeks, and shall remain in session not less than three days, commencing on the said first Monday in August, but after final adjournment of the board of equalization the county commissioners shall not have the power to change the assessed valuation of the property of any person, or to reduce the aggregate

amount of the assessed valuation of the taxable property of the county, but may correct errors in description or double assessments: Provided, that no taxes, except special taxes, shall be extended upon the payrolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue."

(Rem. & Bal. Code, Vol. 2, Sec. 9200, Ed. 1910.)

Pages 142, 143 and 144, and pages 165, 166, 167 and 168 of appellants' brief are devoted to an assault upon the Boards of Equalization of Clallam County for the years 1913 and 1914. It is apparently the contention of the appellants that the Board of Equalization, under the laws of Washington, as it existed in 1913 and 1914, constituted a sort of supervisory assessors' board, whose duty it was to check item by item every feature of the assessment submitted to the board by the assessor on the first of August. As a matter of fact, the duties of the Board of Equalization are indicated by the very title which is given the body, namely, the *equalization* of assessments, not the making of an original assessment, nor the establishing of a ratio of assessment, nor the supervision of the work of the assessor, except as that work may come before the board sitting as a court to hear complaints. By the very terms of the law establishing the board (Rem. & Bal. Code, Vol. 2, Sec. 9200) its sessions are limited to not more than three weeks and not less than

three days, and after its final adjournment it is *functus officio*.

Mute evidence negating the charges of fraud is furnished in the record, so far as the Board of Equalization is concerned, by proof of the way in which it acted upon complaints of assessments made before it. The manner in which this board did its work is established in the record in many places.

G. M. LAURIDSON, a witness called on behalf of the plaintiffs, being sworn, testified substantially as follows:

He has been a resident of Port Angeles for 23 years continuously. He has an interest in a timber claim down in the Solduc Valley.

Q. And you had a conversation with Mr. Hansen, one of the County Commissioners, with reference to taxing that land, did you not?

* * * * *

A. Probably Mr. Hansen spoke for the Board, being Chairman of the Board, and he said I was assessed like everybody else in there; that they could not make fish of one and flesh of another.

Q. Didn't Mr. Hansen tell you that he could not lower the valuation of your timber because it would make a precedent, and that they would put it in to the timber people?

A. No, he said, "If we reduce your assessment it will look as if we were trying to favor you."

Q. As against what?

A. Against the other timber men up there.

The timber claim that he referred to was assessed for 1914 at \$5270. Witness being shown a paper writing signed by him admits that on July 23, 1914, he gave an option on one-half interest in the property for \$1500, and that was the price he was willing to sell for.

(Record, pages 192-193-194.)

Testimony of the defendants' witness Babcock.

Q. You were on the board, I think you said, in 1913, as well as 1914?

A. Yes, sir.

Q. On the Board of Equalization?

A. Yes, sir.

Q. What did you assess the property at, what date did you assess the Port Angeles property at in the rolls of 1912?

A. We did not assess the Port Angeles property at all.

Q. What did you equalize it at?

A. We did not have any tax rate.

Q. What did you pretend to equalize it at?

A. To have all the property as near alike, I suppose, regardless of percentage.

Q. What value did you place upon the properties for the purposes of equalization, fifty per cent of its value, or one hundred per cent of its value?

A. We did not have any occasion to place any valuation.

Q. You did not gauge with reference to its actual value or fifty per cent of its value?

A. Only in comparison.

Q. Comparison with what?

A. Other property.

Q. Just other property?

A. Yes, sir.

* * * * *

MR. FROST: We object to this question for the reason that the Statutes of the State of Washington expressly provide that the County Board of Equalization shall have no power to either raise or lower the aggregate assessed value of property within the county and limits them to the sole duty of equalizing the property as between individual property owners.

THE COURT: He may answer the question. Objection overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

A. That is what I said.

Q. (The Court) That is what you mean to say on what Mr. Frost said?

A. Words to that effect.

Q. Read the question. (Question read.)

MR. PETERS: I think the answer to my question previous to that would be an answer to this question.

Q. Will you answer this question?

A. Yes, sir.

Q. Answer it then.

A. We did not.

Q. You did not what?

A. I simply say "no."

Q. That doesn't answer the question. Did you consider the property as assessed on the roll of 1912 when it was before you for equalization as on the basis of fifty per cent of its actual or market value, or as assessed at one hundred per cent of its market or actual value?

A. Neither one.

- Q. Neither one?
 A. No, sir.
 Q. You paid no attention to that standard?
 A. No, sir.
 Q. Is that true of the equalization of the rolls of 1914?
 A. I think so.
 Q. The same thing?
 A. I think that held good during all of my official connection with the Board of Equalization.

(Record, pages 466, 467, 468).

* * * * *

- Q. I am asking you whether it was your understanding at the time the rolls were before you as one of the Board to equalize that the assessment has been made on the basis of one hundred per cent of the value of the property or made on the basis of fifty per cent or any other per cent of its value?

MR. EWING: The Board of Equalization does not fix the rate. They equalize, is all.

THE COURT: He is asking what his understanding is of what rate was assessed.

WITNESS: I can answer that.

- Q. (Mr. Peters) Answer it.
 A. No, I did not.
 Q. You did not know?
 A. No, sir; that question never came up before the Board of Equalization.

(Record, pages 471, 472).

* * * * *

- Q. You just then adopted the assessment roll?
 A. We compared property.
 Q. With what?
 A. With other property.
 Q. What property did you compare?

- A. We went over the assessment roll personal and real.
- Q. You went over the assessment roll personal and real?
- A. Yes, sir.
- Q. When you went over the assessment roll what did you do, just take any piece of property and tell what you did about that?
- A. I don't remember.
- Q. Suppose you take lot 13 in block 19—I don't know—only consists of Smith's Addition—and you found it in the book assessed at a certain value, what did you do about it?
- A. We looked to see how surrounding property was assessed; if it was assessed at an equal value in our opinion we left it alone.
- Q. If that particular lot 13, block 19, had been assessed at fifty thousand dollars, or had been assessed at five thousand dollars, so long as the next block to it, or the block in its neighborhood was assessed at the same proportionate value, you paid no attention to it?
- A. If, in our opinion, the surroundings, and my knowledge—I have lived in the town a good many years and know something personally about the values of land and lots and property, and I used that to base my judgment on.
- Q. Then you did base your judgment in equalizing that roll on the actual value of land proportionate to the assessment?
- A. Compared to other property.
- Q. To other lands?
- A. Yes, sir, to other lands.
- Q. Did you make any comparison between the value put upon it by the assessor and in your judgment the actual value of it?
- A. No, sir.
- Q. You did not?

- A. No; only as it was compared with other lots and other similar property.

The Board of Equalization made no substantial changes in the roll as handed in by the assessor, or the roll of 1914. They made no changes respecting the timber lands of the plaintiff in either roll.

- Q. Now you stated, Mr. Babcock, that you always had maintained that timber property in an isolated tract in small area timber property ought not to be assessed as high as it was the custom of the assessor of Clallam County to put it.

- A. I do not think I made that statement.

- Q. Then what statement substantially did you make along that line?

- A. That it should not be assessed as high as larger bodies of timber lands; timber sufficient to constitute a logging proposition.

- Q. So that if a man had one hundred and sixty acres in your judgment it ought to be assessed as high proportionately as one who had sixteen hundred acres, is that it?

- A. Practically so, yes, sir.

- Q. For what reason?

- A. For the reason I have stated, that one cannot be logged without the other, that the large tract of timber can be made a profitable logging proposition, and a man that had one hundred and sixty acres down in the west end of this county and that one is unable to do anything with his timber, to market it or sell it or do anything with it at all. He is tied up and hemmed in by speculators and large timber owners, and he cannot get out and some of them with an acre or two of land cleared trying to make a living cannot raise a sufficient amount of produce on one of these little clearings to pay his taxes, when it is as-

sessed at the same value of the large timber owners.

Q. Suppose one of the large timber owners stationed some fellow to make a living on that land who had one hundred and sixty acres down there where these plaintiffs have their land instead of forty-one thousand acres that they have, what would you say should be the rate of taxation on that timber land as compared with the taxation on the forty-one thousand acres?

A. I think it would be entitled to the same consideration.

Q. What consideration?

A. That it should be lower.

Q. What rate, for instance?

MR. EWING: That is objected to, the proof already in shows that there was no discrimination.

THE COURT: The objection is sustained. It is not a matter of rate, it is a matter of valuation. The record shows that the valuation was uniform on both the large and small holdings.

(Record, pages 474, 475, 476, 477.)

Testimony of the defendants' witness FRANK LOTZGESELL:

Q. Take zone No. 2, in which plaintiffs' timber is located; an application was made, was it not, for the reduction of this rate?

A. For the rate on that particular zone?

Q. The rate on the plaintiffs' timber, wherever it might be located?

A. I believe there was.

Q. And in 1914 you raised the rate in this zone, did you not, from seventy cents on fir to eighty cents?

A. No, sir.

Q. In 1914?

A. No, sir.

MR. FROST: He is not the assessor.

Q. (Mr. Earle) I should have said that raise was made and you passed upon the plaintiff's protest and request for a reduction, did you not?

A. Yes, sir.

(Record, page 537).

* * * * *

On re-direct examination witness says all classes of property in Clallam County were raised in 1914 over 1912. The raises were general throughout the whole country.

Q. What are the facts with reference to all protestants who appeared before the Board in either 1912 or 1914 being given a full, free and fair hearing?

A. They all had a fair hearing and free.

Q. Was anybody denied a hearing, or shut out?

A. No, sir.

Q. What official records had the Board of Equalization before them while sitting as a Board of Equalization?

A. They had the assessor's records.

Q. Of what did those records comprise?

A. The assessments of the county.

Q. And what else?

A. All the property in the county, I suppose.

Q. They had the cruise books, didn't they?

A. Yes, sir, they had the cruise books.

Q. Both the timber cruises, and the land cruises?

A. In 1914, most all the land cruises was there, I think, but not in 1912.

(Record, pages 540, 541).

* * * * *

. Witness further states that the assessor raised the assessment in 1914, but the assessor never explained to witness as a member of the Board of Equalization in 1914, why the assessment was raised. The Board did not ask for any explanation. The Board did not consider the reason for the raise. Witness does not think that the only reason for raising the assessment in 1914 was that the levy might be reduced. Witness always contended that it made no difference what property was assessed as long as it was equal among the county.

Q. So long as you were on the Board of Equalization you never took into consideration whether the assessment made by the assessor was higher than it ought to be compared with the fair market value of the property assessed, or was lower than it ought to be?

A. As long as it was equal.

* * * * *

Q. As long as all the farm property was assessed on the same proportionate basis you never considered whether farm property as a class was assessed higher than it ought to be or not?

A. As long as the farm property was at the same rate as the timber or the town property we thought it made no difference; at least, I thought it would make no difference.

(Record, pages 542, 543).

* * * * *

Redirect Examination by Defendants.

Witness says that when there was a difference of 'opinion on the Board of Equalization as to the valuation of property, they all talked it over and argued on it. They went up to Sequim once, he thinks, and looked over the property; thinks the Board also made a trip of inquiry to Port Angeles and looked over the property there in 1914. They went down Front Street and up the hill through the regrade district, and back down on First Street, and to the court house. There had been protests made about the assessments being too high. The assessor's figures were not changed very much. There may have been a few instances, but the witness does not recall of any.

Q. (By defendants' counsel) You concluded that the assessments made by the assessor were as nearly correct as could be made?

A. Yes, sir.

(Record, pages 548, 549).

Testimony of the defendants' witness, John C. Hansen:

Q. What rate did you assess it at in 1912?

MR. EWING: I object to that on the ground that the Board of Equalization does not fix the assessment. That is a matter that is fixed by the assessor entirely.

Q. What rate did you understand when you were equalizing the rolls in 1912 that the timber land of these plaintiffs and others were assessed at?

A. I could not tell you, that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce,

eighty cents, and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion, and I have always gone according to my own opinion. My opinion is that that was assessed at least one-third at that time.

Q. That that was less than one-third of the value of the property?

A. Yes, sir.

Q. That the timber lands then that were assessed eighty cents on the dollar were worth two dollars and twenty cents?

A. Two dollars and fifty, it was worth it, and two years ahead of that it was worth fifty cents more yet.

Q. Then your idea was that in 1912, with reference to the equalizing of the roll of 1912, that the timber lands that were assessed at eighty cents a thousand were worth two dollars and fifty cents a thousand?

A. Yes, sir.

* * * * *

Q. In your judgment, when you equalized the roll for 1914, you considered that the timber lands of the plaintiffs were worth no more on the market than they were in 1912 when you equalized them?

A. Just about the same. They were worth more in 1908, 1907, 1909 and 1910.

Q. If they were not worth more in 1914 when you equalized them, than they were in 1912, why did you assess them more?

MR. FROST: I object to that on the ground that it is an improper question, an inquiry of the Equalization Board as to their

reasons and mental process that they employed in fixing and determining the assessed value of any article or property that they had to do with.

MR. EWING: And for the further reason that the Board of Equalization has nothing to do with fixing the assessment. That is a matter entirely in the hands of the assessor.

Q. (Mr. Peters) When you were called upon to pass upon this roll of 1914, did you observe that the timber lands of the plaintiffs here were assessed at considerably more than they were in 1912?

A. They were ten cents more.

Q. They were assessed at ten cents a thousand more?

MR. FROST: May we stipulate that this objection goes to this whole line of testimony?

MR. PETERS: Yes, sir, the whole line of it. You may elaborate it when the referee writes up his notes in any way you want to.

WITNESS: I don't care what he asks. I am not defending anybody. I did my duty, and that is all I care about. You may ask all the questions you want. I remember the transaction.

Q. Why did you consent to the approval of the roll in 1914 that assessed these timber lands at ten cents a thousand more than in 1912, when they were worth no more in your judgment on the market in 1914, than they were in 1912?

A. 1912 was not assessed high enough.

Q. 1912 was not assessed high enough?

A. No, sir. The assessors did not make a

raise as high, as in my opinion it should have been.

(Record, pages 642, 645).

* * * * *

- A. Of course, the assessor, in his opinion, assessed it at fifty per cent, but I am not agreeing with him. I may pass upon it and all that, although I may say this cow you have here assessed as twenty dollars, and I maintain that the cow was worth sixty dollars, but at the same time I may have let it pass and that cow should have been assessed at thirty dollars.
- Q. At what basis did you understand at the time you were acting upon the Board of Equalization in August, 1914, that the assessor had intended to assess this timber at?
- A. I do not understand; I do not know what he did, and I never knew what he had assessed the timber at until the Board of Equalization met; because John Hallahan is one of the kind of fellows, and I would say, "John, what are you doing," would say I can get my knowledge on the first Monday in August, the same as everybody else did. That is the kind of a fellow John Hallahan is.
- Q. Did you understand when you were sitting on the Board of Equalization that you had no power to raise or lower the taxes or the valuations as assessed by the county assessor?
- A. Did I understand I had no power to raise or lower? No, sir, I did not understand that.
- Q. Did you understand that you had no

power to raise or lower the assessments of the assessor?

A. No, sir.

Q. What did you understand about it, that you could raise it?

A. That we could raise it within a certain length of time. We can lower it during all the time, during the three weeks, but for raising we must send out notices in the first ten days.

(Record, pages 645, 646).

* * * * *

Q. What was the basis you used by the assessor for the assessment of city property in Port Angeles upon the roll of 1914, that came up to you for equalization?

OBJECTION.

MR. PETERS: While that seems to be true of this matter so far as his duties as a public official are concerned, we desire to accentuate his ignorance.

A. Well, I cannot answer for the assessor, although I do not want to be unfair. I supposed he used the fifty per cent basis, as near as he could, according to his judgment. He may differ from me. Mr. Earle knows that we had great big cards, and we had every lot on that card, and we went over those cards, lot by lot, and we went and inspected the lots, not over the whole townsite, but over the main places where we felt it might have stood a little higher, or a little lower, and we used them on the Board as a whole. I even put my figures on; I took all of the Board of Equalization, and I says, "Let's put the figure here on this one and this one and see how it will come out, and we tried to change the assessment a little bit there down town,

and by the time we got through considering it and reconsidering it, the assessor's figures were the best and we let them stand.

Q. How did you try to change them?

A. Add values.

Q. What changes did you try to make?

A. What do you mean?

Q. You said you tried to change them and put them on a list and cover it up?

A. One man comes up and says this: "Somebody else says my property is assessed too high in comparison with this man opposite, and for instance if he has got one marked down here ten thousand dollars and we will make this one nine thousand dollars and see how it will work through the block. My figures are still on the cards and you can look at them how we did. When we got through we all concluded that the assessor's figures were just about right, as right as any man at that time could get them.

Q. And you made no changes?

A. Yes, we did make some changes.

Q. You did not consider that the assessor's figures were all right?

A. No; but what stands we did not change. We considered we could not better it any.

(Record, pages 647, 648).

The contentions of the appellants embodied in their attack upon the assessment of timber lands by zones seems to be rested entirely upon the decision of the Supreme Court of Wisconsin in *Hershey vs. Board of Supervisors of Barron County*, 37 Wis. 75. We have paid some attention to that

case in a previous portion of this brief, but the emphasis apparently laid upon the decision perhaps warrants a further brief reference to it.

It will be noted that the Wisconsin court rests its decision upon the peculiar requirements of the Wisconsin statute, which has very little in common with the Washington statutes under which the assessments here in controversy were made. The Wisconsin statute is quoted by the court:

“Real property shall be valued by the assessor from actual view, at the full value which could ordinarily be obtained therefor at private sale, and which the assessor shall believe the owner, if he desires to sell, would accept in full payment. In determining the value, the assessors shall consider as to each piece, its advantage or disadvantage of location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, or other valuable deposits known to be available therein, and all buildings, fixed machinery and improvements of every description thereon, and their value.

(Sec. 16, ch. 130 Laws of 1868.)”

Analyzing this statute in its application to the case then before it, the Supreme Court of Wisconsin says:

“The assessor is required to make the valuation from actual view, and he is called upon to

exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in short, he is to consider all the elements which enter into and constitute its value."

(Hersey vs. Board of Supervisors of Barron County, 37 Wis. 75 (79)).

Without being subject to the operation of the Wisconsin statute, it so happens that the assessor of Clallam County brought his assessment within the literal requirements of that statute, as stated by the court. Although not required by the laws of Washington to make an actual view of the premises, the assessor of Clallam County in these cases did exactly that through the cruisers who made the cruise.

"Q. (Mr. Ewing.) Mr. Hallahan, were these men here, whose names have been mentioned, Mr. Crueger, and the other men employed as cruisers and the men who gathered the data from which these books were made, deputy assessors?"

A. They were in a sense. They were assessing officers of the county. Each one of them took an oath to perform the duties of that particular office during the period he was in the field, and if he should for any reason have violated any of the laws of the State while in the field, he was to be subject to prosecution.

Q. And these data, including agricultural

lands, and other lands, non-timbered lands, and timber lands, were all compiled and collated under your direction while you were assessor?

* * * * *

A. Yes, sir."

(Record, pp. 295-296).

The Wisconsin court says:

"and is called upon to exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in short, he is to consider all of the elements which enter into and constitute its value."

The record, on page 268 *et seq.*, shows the detailed manner in which the Clallam County timber lands were valued for assessment. Referring to the volume containing the cruise of Section 31, in Township 30 North, Range 12 West, which is the land of the Clallam Lumber Company, the witness Hallahan explains that the small subdivisions represent ten acre tracts, the designations of them being in the diagram or map in the upper left hand corner of the page. The letter "F" represents fir; the figures following the letter represent the number of trees on that ten acres. The next figure is the figure "A", a small "a", representing the average number of thousands of feet, board measure, contained in each tree. In the ten acres used for illustration the

record shows fifty fir trees of the average of 15,000 feet to the tree. The next letter represents trees of a smaller average of board measurement. In the illustration used by the witness the figure represents fifteen fir trees, with 8,000 feet, board measure, to the tree. The next letter "S" is spruce. There are 4,000 feet of timber in each single tree. The next letter is "C", which represents cedar, of which there is none on the ten acres used for illustration. The next letter, "H", represents hemlock and in the illustration given fifty hemlock trees average 2,000 feet, board measure, per tree. The cruise represents the tree count upon each ten acres in each section. The cruise in each forty acres is totaled up for each forty acres or government lot smaller than forty acres. The characters "H-P" represents hemlock piles or poles; and in an illustration used by the witness three trees are indicated on the cruise. "H-T" represents hemlock ties, of which there are one hundred twenty-five in the forty acre description used by the witness for illustration. At the top of the map, in the upper right hand corner, there is another plat which is a topographic sketch made by the cruiser in the field of each forty acres there, a double run, the cruiser starting at the east, in the corner, and coming back up through the center in each ten-acre tract, the cruiser traveling

one mile through each ten acres and tying to his original corner by finding the stake. Doubling back and traversing the section he would have gone through each forty-acre piece twice and through the center of each ten acres. The figures on the ten-acre tracts represent the elevations taken by aneroids. Representations of green, bushy stuff on the plat refer to a swamp. A dotted line indicates a trail traversing the section east and west. The total shown in the tabulation indicates the total amount of feet of each variety of timber, and in making the assessment, dead and down fir is not used; it is not considered at all. The tabulation further shows the percentage of different grades of logs, designating them as No. 1, or first-class logs, and No. 2, or merchantable. In the illustration used, the tabulation shows forty per cent No. 1 fir, forty per cent merchantable, and twenty per cent No. 3 logs. The same classification holds as to spruce and hemlock, with different figures, indicating the quantity of each kind of timber. Following on down the right side of the page, under the heading of "General Description," the cruise gives the character of the surface of ground as to its roughness and smoothness, the character of the soil, the character of clearing, improvements, if any, and the general classification of the lands. Over on the left-hand corner of the page, under the illustration

used by the witness, under the heading "Character of Timber," is the notation of fir, which gives the quality as being old growth, good quality, averaging one hundred sixty feet long, smooth and sound, excepting that about twenty-five per cent shows signs of ground-rot. The balance of the different varieties of timber are classified the same way. Coming under the heading of "Logging Conditions," the cruise record indicates the character of the conditions. In the illustration used by the witness the ground is the very best. The surface is nearly level, the undergrowth light, very few windfalls, timber to be handled with railroad spurs and donkey engines west to the Sol Duc River, and thence down the river by railroad.

With reference to Sec. 15, Twp. 29, R. 13, and the map in the upper right-hand corner of the page, the coloring in yellow represents land that has been burned over.

All the timber lands in Clallam County were cruised with equal care, and the assessor has the same report of conditions and the same kind of information concerning all the timber lands in that county. Mr. Duvall had absolute charge of the cruising in the field, and his work was very correct and complete. The valuations placed on the timber lands in Clallam County for the year 1914 by the

assessor were made upon the basis of these cruises. (Record, pp. 268, 269, 270, 271, 272 and 273.)

All of the requirements of the Wisconsin statute are met by these Clallam County cruises; and every objection that the Wisconsin court found to the assessment in controversy in the *Hersey* case is obviated by the particularity and detailed information afforded by the Clallam County cruises.

The appellants' whole argument based upon a comparison of percentages of real valuation to assessed valuation is inherently fallacious; percentages are deductions arrived at by mathematical calculations, and in comparing the percentages of real value at which timber lands in Clallam County are assessed with the percentages of alleged real value at which other property in the county is assessed, the appellants must of necessity presuppose the dishonest action of the assessing officers of Clallam County and assume the infallibility of the appellants' own witnesses and their testimony as to valuations upon other classes of property from which the alleged discriminatory percentages are derived. By such a course of reasoning, whenever a protesting taxpayer could obtain witnesses to testify that other classes of property have an actual value of a certain fixed sum greater than that

ascribed to it by the assessor, he could conclusively demonstrate a discrimination practiced against him by showing that the percentage resulting from a determination of the ratio of the assessed value to the real value of such other classes of property was less than the percentage ascertained by determining the ratio of the assessment to the real value of his property. The percentages alleged to be discriminatory in such a case will necessarily vary with the opinions of witnesses as to the value of property which is the basis from which the percentages are computed.

“If the local assessors throughout the state are bound to adopt some certain rule or method in reaching assessable values and if their assessments must fail unless, when questioned, they can state some certain rule or method by which they were guided, I believe a large measure of their assessments would fail to withstand the assaults of the taxpayers.”

Opinion of Robert Earl, Referee, Special Franchise Tax Cases, afterward decided and report in People ex rel. Metropolitan Street Railway et al. vs. State Board of Tax Commissioners, 67 N. E. 69.

Upon such a contention the appellants necessarily reverse the rule of presumption which obtains in such cases, and in order to substantiate their theory the presumption must be necessarily

indulged that the valuation placed upon such other classes of property by witnesses testifying to values are conclusively correct and the figures placed thereon by the assessor are presumptively incorrect. The presumption which the law indulges in cases of this sort is exactly contrary to such a theory, and is all in favor of the taxing and equalizing officers.

“The law constantly presumes that public officers charged with the performance of official duty have not neglected the same, but have duly performed it at the proper time and in the proper manner. In the absence of evidence to the contrary, this presumption will prevail, but it is not an indisputable one and may be overcome by countervailing evidence. Where the rights of the public require it the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. This presumption is in accordance with the established and familiar maxim, *Omnia presumuntur rite et solemniter esse acta donec prebetur in contrarium*—everything is presumed to be rightly and duly performed until the contrary is shown. The presumption is constantly indulged in support of all kinds of official action.”

Meacham on Public Officers, Section 578.

“The assessor and board of equalization act in a quasi judicial capacity in making or equalizing assessments. The law presumes that they have performed their duty in a proper manner. Where the rights of the public re-

quire it, the presumption in favor of due performance is liberal, and the evidence to overturn it must be clear."

Templeton vs. Pierce County, 25 Wash. 377 (382).

"That the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

N. P. R. Co. vs. Pierce County, 55 Wash. 108 (111).

"The assessor in placing valuations upon property for the purpose of assessment acts in a quasi judicial capacity, and the law presumes that he has done his duty in a proper manner, and, as we said on another occasion, this presumption is liberal, and is not to be overturned except by clear and convincing evidence. *North-ern Pac. R. Co. vs. Pierce County*, ante, p 108, 104 Pac. 178."

Vancouver Water Works Co. vs. Clarke County, 55 Wash. 112 (115).

"It will not do to convict public bodies, the members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothesis than that of such improper action."

Olympia vs. Stevens, 15 Wash. 601.

A reason for the presumption may be found in

the language of the Supreme Court of the United States in its decision in *The State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663, where it says:

“As all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the Circuit Court, should be better or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter.” (P. 672.)

“The inequality of which complaint is made is one that is general in its nature. If the plaintiff’s attack were allowed to prevail, the whole assessment roll might be invalidated, and serious embarrassment might be caused to governmental operations. I do not think that the exercise of the equitable power of the court can be invoked to accomplish the subversion of a general scheme of assessment and taxation, which has been adopted by the department of government constituted for the purpose.”

Mercantile National Bank vs. New York, 172 N. Y. 35, 64 N. E. 756 (761).

It is doubtless, because of the chaotic results which would follow the judicial sanction of a scheme of comparison based upon percentages derived by mathematical calculation computed upon varying factors of actual valuation (because dependent upon opinions of persons holding different views), that the courts have limited comparisons of this sort to

like property of similar character, similarly situated and of similar value by reason of similar use.

Templeton vs. Pierce County, 25 Wash. 377, *supra* (382).

Vancouver Waterworks vs. Clarke County, 55 Wash. 112 (114, 115).

N. P. R. Co. vs. Pierce County, 55 Wash. 108 (110, 111, 112).

Collins vs. King County, 80 Wash. 251 (252, 253, 154).

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (955), 257 Ill. 424.

Appellants have interspersed a complicated and elaborate argument based largely upon fictions of their own creation, not founded upon proved facts in the record, with numerous citations of authority tending to establish legal propositions for which the appellants apparently contend. Most of these decisions we have ignored entirely because the arguments in support of which they are cited have, in our opinion, no bearing upon the real issues involved in this appeal.

The decision of these cases hinges upon questions of fact governed by principles of law established by the decisions which we have cited to the court and many others of similar tenor with which the court is undoubtedly familiar.

The assessments which are attacked were made by the officer charged by law with that duty; they were reviewed and equalized by boards constituted for that purpose, after full and fair hearings at which appellants were represented; the action of these officials has been reviewed by a trial court before whom numerous witnesses were examined, and who had ample opportunity to observe their manner of testifying and to judge of their qualifications and credibility; before whom much testimony was adduced not made a part of the record brought up to this court, and who has found the facts in this case, supported by a great preponderance of the evidence, and has entered a decree in accordance therewith. Under such circumstances, and in the light of the law submitted and the facts disclosed by the record, we respectfully submit that this court should affirm the decision of the trial court.

Respectfully submitted,

FRANK L. PLUMMER,
Prosecuting Attorney.

JOHN E. FROST,
EDWIN C. EWING,
RICHARD SAXE JONES,
C. F. RIDDELL,
Attorneys for Appellees.

Appendix

PORT ANGELES REAL ESTATE

Tabulated comparison of percentage of assessed valuation to the valuation placed upon the same parcels by certain witnesses.

1914 VALUATIONS

<i>Description of Property—</i>	<i>Ald- well</i>	<i>Hag- gith</i>	<i>Levy</i>	<i>Ware</i>	<i>Henry</i>
Block 1, Tidelands west of Laurel St....	42%	54%	39%	23%	45%
Block 1, Tidelands east of Laurel St....	50%	.....	46%	24%	45%
Block 2, Tidelands....	122%	.....	76%	24%	47%
Block 15, Townsite	40%	.....	37%	26%	47%
Block 14, Townsite	47%	44%	51%	22%	44%
Block 16, N.R. Smith's....	54%	52%	48%	27%	59%
Block 54, Townsite....	58%	.....	41%	32%	59%
Block 69	56%	.....	48%	40%	59%
Block 55	17%	.....	.....	.....	.....
Block 17	66%	.....	57%	24%	.....
Block 30	48%	.....	70%	26%	65%
Block 31	56%	.....	54%	221½%	65%
Block 32	80%	.....	.....	31%	70%
Block 2, East .....	.....	.....	.....	33%	120%
Block 17, Thompson & Goodwin and N. R. Smith's .....	.....	.....	57%	211½%	.....
Block 18, Strattons.....	.....	.....	54%	25%	53%
Block 19, Stratton's .....	.....	.....	51%	241½%	58%
Block 20, N. R. Smith's...	.....	.....	50%	23%	53%
Block 29, Stratton's.....	.....	.....	51%	25%	51%
Block 28, N. R. Smith's...	.....	.....	52%	22%	61%
Block 27, N. R. Smith's...	.....	.....	54%	20%	49%
Block 30, Thompson & Goodwin .....	.....	.....	.....	25%	58%
Percentage of entire ap- praisement as shown on following pages	50.7%	48%	49.8%	25%	54%

Plaintiff's Exhibit J is an estimate furnished by the witness Aldwell to the contractors of the value of certain property which is enclosed within the red line on the map of Port Angeles (Defendants' Exhibit 14). Mr. Aldwell testifies that he is not particularly impressed with the future of this property, and values it at \$80,000. The assessed valuation is \$59,300, or an assessment, according to Mr. Aldwell's judgment, of 74 $\frac{1}{8}$ per cent.

The same witness, Aldwell, during the trial, made an independent tabulation of certain of the property covered by Plaintiff's Exhibit E. A comparison of his figures showing his estimate of the value of this section of Port Angeles real estate on March 1st, 1914, with the assessment, gives the following result:

*Comparison of Assessed Valuation for 1914 with
the Valuation of T. T. Aldwell in Defendants'
Exhibit 17.*

<i>Description of Property—</i>	1914 Assessment (Defts. Ex. 14.)	Valuation by Aldwell (Defts. Ex. 17.)	Per Cent. of Assessment to Witness' Valuation
Block 1, Tide Lands, west of Laurel St., Lots 1 to 8	\$ 28,600	\$ 68,500	42%
Block 1, Tide Lands, east of Laurel St., Lots 1 to 9	34,500	69,500	50%
Block 2, Tide Lands, Lots 1 to 9	21,400	17,500	122%
Block 15, Town Site, Lots 1 to 20	50,300	126,000	40%
Block 14, Town Site, Lots 1 to 5, 16 to 20	17,500	37,000	47%
Block 16, N.R. Smith's, Lots 1 to 3, 7 to 18	38,100	70,500	54%

<i>Description of Property—</i>	1914 Assessment (Defts. Ex. 14.)	Valuation by Aldwell (Defts. Ex. 17.)	Per Cent. of Assessment to Witness' Valuation
Block 54, Town Site, Lots 1 to 9, 12 to 18	6,200	10,600	58%
Block 69, Lots 4 to 15	4,000	7,100	56%
Block 55, Lots 1 to 5.....	350	2,050	17%
Block 17, Lots 1 to 18	15,200	22,950	66%
Block 30, Lots 1 to 18	8,860	18,250	48%
Block 31, Lots 1 to 18	18,900	33,700	56%
Block 32, N.R.Smith's, Lots 2, 4, 5 and 18	4,600	5,700	80%
Total	\$248,510	\$489,350	
Average per cent.....			50.7%

PORT ANGELES VALUATIONS

A Comparison of 1914 Assessed Valuations with the Valuations Placed by Witness C. L. Haggith (Defendants' Exhibit 37) for the Same Year; And the Per cent. of Assessment to Witness' Valuations.

<i>Description of Property—</i>	Assessed Value 1914	Values C.L.Haggith 1914	Per Cent.
Block 121, Townsite, Lots 1 to 20	\$ 810	1,790	45%
Block 142, Lots 1 to 20	740	1,890	40%
Block 71, Lots 1 to 20	6,000	10,400	58%
Block 166, Lots 1 to 18	4,520	9,550	47%
Block 231, Lots 1 to 18	4,280	9,400	46%
Block 380, Lots 1 to 18	1,940	3,675	53%
Block 421, Lots 1 to 10	820	1,600	51%
Block 307, Lots 1 to 20	640	1,400	46%
Block 100, Lots 1 to 20	1,400	3,750	37%
Block 377, Lots 1 to 20	1,000	2,305	44%
Block 288, Lots 1 to 18	3,060	4,900	62%
Block 36, Lots 1 to 20	10,050	22,800	44%
Block 12, Lots 1 to 20	10,300	27,600	37%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 34, Lots 1 to 20	16,500	26,550	62%
Block 97, Lots 1 to 20	8,560	17,000	48%
Block 327, Lots 1 to 20	3,360	7,550	45%
Block 341, Lots 1 to 18	2,360	5,800	41%
Block 14, Lots 1 to 20	31,000	70,000	44%
Block 25, N.R.Smith's, Lots 1 to 18.....	5,300	12,300	43%
Totals	\$110,920	\$231,290	
Average per cent.....			48%

PORT ANGELES VALUATIONS

A Comparison of 1914 Assessed Valuation with Valuation Placed by Witness Lewis Levy (Defendants' Exhibit 35) for the Same Year; And the Per Cent of Assessment to Witness' Valuations.

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
District No. 1: .			
Block 1, Tidelands, West of Laurel St., Lots 1 to 10	\$ 36,000	\$ 91,500	39%
Block 1, East of Laurel St., Lots 1 to 9	34,500	74,500	46%
Block 2, East of Laurel St., Lots 1 to 9	21,100	27,500	76%
Block 14, Townsite, Lots 1 to 20	31,000	60,500	51%
Block 15, Townsite, Lots 1 to 20	50,300	135,500	37%
Block 16, N.R.Smith's, Lots 1 to 18	47,110	97,500	48%
Block 31, N.R.Smith's, Lots 1 to 4, 10 to 18	9,300	17,100	54%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
Block 30, N.R.Smith's, Lots 7 to 12	4,300	6,200	70%
Block 21½ (Dist. No. 2), East, Lots 1 to 5 and 7	2,200	2,000	110%
Block 3, East, Lots 1 to 9	6,540	3,000	218%
Block 3½, East, Lots 1 to 9	1,150	2,000	57½%
Block 4, East, Lots 1 to 9	3,140	2,500	125%
Block 4½, East, Lots 1 to 9	1,020	1,500	68%
Block 5, East, Lots 1 to 9	2,380	2,500	95%
Block 5½, East, Lots 1 to 9	790	1,500	53%
Block 6, East, Lots 1 to 9	1,530	1,500	102%
Block 6½, East, Lots 1 to 9	530	1,500	35%
Block 7, East, Lots 1 to 9	2,550	1,500	170%
Block 7½, East, Lots 1 to 9	840	1,500	56%
Block 17, Thompson & Goodwin's, Lots 1 to 6, 13 to 18; N. R. Smith's, Lots 7 to 12	15,200	26,700	57%
Block 18, Stratton's, Lots 1 to 4, 15 to 18, and N. R. Smith's, Lots 5 to 14	11,490	21,200	54%
Block 19, N.R.Smith's, Lots 1 to 7, 12 to 18; Stratton's, 8 to 11	10,160	19,800	51%
Block 20, N.R.Smith's, Lots 1 to 18	8,050	16,000	50%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
Block 27, N.R.Smith's, Lots 1 to 8, 10 to 14	4,750	8,800	54%
Block 28, N.R.Smith's, Lots 8 and 9	1,400	2,700	52%
Block 29, Stratton's, Lots 1 to 4, and N. R. Smith's, Lots 5 to 9	5,700	11,100	51%
Block 54, Townsite, Lots 1 to 5, 12 to 18	4,500	11,100	41%
Block 34, Townsite, Lots 1 to 20	16,500	28,500	58%
Block 69, Townsite, Lots 4 to 9	2,150	4,500	48%
Block 66, Leighton, Lots 4 to 18	840	1,500	56%
Block 71, Townsite, Lots 1 to 20	6,000	10,400	58%
Block 2, Tidelands, West, Lots 1 to 5	7,600	18,000	42%
Block 12, Townsite, Lots 1, 2, 5 to 20	10,300	19,000	54%
Block 13, Townsite, Lots 1 to 9, 11 to 20	19,000	34,500	55%
Block 211, Townsite, Lots 1 to 18	940	1,000	94%
Block 265, Townsite, Lots 1 to 4, 16 to 20	2,010	3,600	56%
Block 287, Townsite, Lots 1 to 18	2,400	3,800	63%
Block 375, Townsite, Lots 1 to 20	1,320	2,325	57%
Total	\$386,590	\$775,825	
Average Percentage			49.8%

CITY VAL

*A Comparison of 1912 and 1914 Assessed Valua
Ware (Plaintiffs' Exhibit 2), for the Same
Valuations.*

Description of Property—

Block 1, Tidelands, west of Laurel St., Lots 1 to 10.....	
Block 1, East of Laurel Street, Lots 1 to 9	
Block 2, East of St., Lots 6 to 9	
Block 14, Townsite, Port Angeles, Lots 1 to 5, 16 to 20	
Block 15, Townsite, Port Angeles, Lots 1 to 20	
Block 16, N. R. Smith's, Lots 1 to 18	
Block 17, N. R. Smith's, Lots 8 to 11	
Block 32, Townsite, Lots 2 to 5	
Block 31, N. R. Smith's, Lots 1 to 9	
Block 30, N. R. Smith's, Lots 8 and 9	
Dist. No. 3, Blk. 2, East, Lots 1 to 5	
Block 17, Thompson-Goodwin, Lots 1 to 7, 12 to 18..	
Block 18, Stratton's and N. R. Smith's, Lots 1 to 18..	
Block 19, Stratton's and N. R. Smith's, Lots 1 to 18..	
Block 20, N. R. Smith's, Lots 1 to 18	
Block 30, Thompson & Goodwin, Lots 1 to 7	
Block 29, Stratton's and N. R. Smith's, Lots 1 to 9.....	
Block 28, N. R. Smith's, Lots 8 and 9	
Block 27, N. R. Smith's, Lots 1 to 8	
Dist. No. 4, Blk. 30, Thompson & Goodwin, Lots 10 to 14	
Block 31, N. R. Smith's, Lots 14 to 18	
Block 54, Townsite, Lots 1 to 5, 12 to 18	
Block 69, Townsite, Lots 4 to 9	
Totals.....	
Less parcels not listed 1912	
Average per cent.	

UATIONS

tions with the Valuations Placed by Witness W. J. Years; and the Per Cent. of Assessment to Witness'

Assessed Value 1912	Value W.J.Ware 1912	%	Assessed Value 1914	Value W.J.Ware 1914	%
\$ 16,440	\$ 96,000	17%	\$ 36,000	\$152,000	23%
12,860	84,500	15%	34,500	151,000	24%
3,980	31,000	13%	11,500	48,000	24%
7,750	41,000	19%	17,500	80,000	22%
21,450	121,500	18%	50,300	192,500	26%
17,695	90,500	19½%	46,110	170,000	27%
2,300	9,500	24%	6,000	19,000	32%
Not listed 1912			5,600	18,000	31%
6,200	29,000	21%	14,500	57,500	25%
600	4,750	13%	2,500	8,500	29%
2,800	14,500	19%	9,600	29,000	33%
4,450	21,250	21%	9,200	42,500	21½%
6,650	24,850	27%	11,490	46,000	25%
6,020	20,650	29%	10,160	41,250	24½%
5,250	17,700	30%	8,050	35,250	23%
2,150	9,950	22%	4,500	19,500	23%
2,900	11,850	24½%	5,700	23,000	25%
750	3,500	21%	1,400	6,500	22%
2,050	6,700	31%	3,250	16,500	20%
390	2,150	18%	1,270	5,100	25%
1,500	4,000	37½%	2,400	8,000	30%
Not listed 1912			{ 2,150	8,000	27%
Not listed 1912			{ 2,350	6,300	37%
			2,150	5,400	40%
<hr/> 124,185	<hr/> 644,850		<hr/> 298,180	<hr/> 1,188,800	
			12,250	37,000	
			<hr/> 285,930	<hr/> 1,151,800	
		19%			25%

PORT ANGELES VALUATIONS

*Comparison of Assessed Valuations for 1914 with
the Valuations of C. C. Henry in Defendants'
Exhibit No. 36, and Per Cent. of Assessment to
Witness' Valuations.*

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 1, Tidelands, West of Laurel St., Lots 1 to 10	36,000	80,000	45%
Block 1, East of Laurel, Lots 1 to 9	34,500	76,000	45%
Block 2, East of Laurel, Lots 6 to 9	11,500	24,500	47%
Block 4, Townsite, Port Angeles, Lots 1 to 20	17,500	40,100	44%
Block 15, Townsite, Lots 1 to 20	50,300	106,500	47%
Block 16, N.R.Smith's, Lots 1 to 18	46,110	78,500	59%
Block 17, N.R.Smith's, Lots 8 to 11	6,000	7,500	80%
Block 32, Townsite, Lots 2 to 5	5,600	8,000	70%
Block 31, N.R.Smith's, Lots 1 to 9	14,500	28,500	51%
Block 30, N.R.Smith's, Lots 8 and 9	2,500	3,200	78%
Block 2, East, Lots 1 to 5	9,600	8,000	120%
Block 27, Thompson- Goodwin, Lots 1 to 18	9,200	15,700	59%
Block 18, Stratton's, Lots 1 to 5	3,190	6,000	53%
Block 18, N.R.Smith's, Lots 6 to 13, and Stratton's 14 to 18..	8,300	15,800	53%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 19, N.R.Smith's, Lots 1 to 7, 12 to 18, Stratton's, 8 to 11.....	10,160	17,300	58%
Block 20, N.R.Smith's, Lots 1 to 18	8,050	15,200	53%
Block 30, Thompson- Goodwin, Lots 1 to 7	4,500	8,600	52%
Block 29, Stratton's, Lots 1 to 5, and N. R. Smith's, 6 to 9.....	5,700	11,200	51%
Block 28, N.R.Smith's, Lots 8 and 9	1,400	2,300	61%
Block 27, N.R.Smith's, Lots 1 to 8	3,250	6,600	49%
Block 30, N.R.Smith's, Lots 10 to 14	1,270	2,200	58%
Block 31, N.R.Smith's, Lots 14 to 18	2,400	3,000	80%
Block 54, Townsite, Lots 1 to 5	2,150	4,200	51%
Lots 12 to 18	2,350	3,500	67%
Block 55, Townsite, Lots 5 and 6	140	200	70%
Block 69, Townsite, Lots 4 to 9	2,150	3,650	59%
Total	<u>\$298,320</u>	<u>\$576,250</u>	
Average Per Cent.			54%

ABSTRACT OF TESTIMONY OF DEFEND-
ANTS' WITNESSES CONCERNING TIMBER,
ITS VALUE AND AVAILABILITY.

JOHN HALLAHAN:

Direct Examination

Vol 2, page 258—

Was County Assessor of Clallam County in 1912 and 1914. Had charge of the timber cruise in Clallam County. Prepared a map (Exhibit 18) showing most of the timber holdings. It showed all the large owners.

Pages 259-60—

Defendants' Exhibit 18 shows the assessment for 1914 and the ownerships.

Pages 261-2—

Points out the holdings on the map.

Pages 268-272—

Witness explains a sheet from the county timber cruise, explaining method of compilation and meaning of each term.

Page 271 —

The dead and fallen timber is enumerated in the cruise but is not assessed and not considered at all.

Page 273—

The work has been done by Mr. Duvall and has been very correct and complete.

R. H. THOMSON:

Direct Examination

Page 301—

He is a civil engineer. His competency in all scientific lines is conceded by plaintiff. In 1891 he personally did the work and reported on the estimated cost of a railroad in Clallam County from the mouth of the Pysht River to the Sol Duc by way of Beaver Creek, and found the possibility of building a railroad on several different grades depending on the amount the parties wished to spend. One route had a maximum grade of 2% and the other a maximum of 3%.

Page 302—

One route with a maximum grade of 2% was twenty-one miles in length, and the estimated cost \$320,000.00. The other was between sixteen and seventeen miles in length at a maximum grade of 3%, and was estimated to cost \$210,000.00.

Page 303—

If he were at present building a logging road into that country, would not hesitate to use a sixteen or eighteen degree curve, and would not hesitate to cheapen the road by introducing as

high as five and six per cent. grade. Result of which would be to reduce the cost not to exceed \$9,500.00 per mile (or \$156,750.00 for sixteen and a half miles.) In 1891 he estimated the cost as over \$12,000 a mile for the 3% grade, and over \$16,000 per mile for the 2% grade.

Cross-Examination

He did this work for the firm which is now Merrill & Ring. Knew nothing of the ownership of the timber lands on the Pysht.

Page 304—

A Mr. Young, of Saginaw, Michigan, came out under instructions to get a careful estimate of the cost of a road from the Sol Duc. Mr. Thomson went with him, with men, and staid up in the country until they were satisfied with their information, but he did not know until he wrote his report who it was done for, and never saw any member of the firm until a Mr. Merrill introduced himself to the witness about three minutes before the witness took the stand. The only notice the witness had that he was to be called was a notice he got from Mr. Ewing.

ALEX. POLSON:

Direct Examination

Page 305—

He is a logger and lumberman. Has bought

and sold timber and timber lands in the State of Washington. Has been in the lumber and logging business in Washington since 1879, and in that business for over forty years. His principal logging operations are at Hoquiam. Is familiar with the value of timber and timber lands throughout the Northwest, and in the State of Washington in particular. He has examined the county cruises of plaintiffs' holdings and the holdings in Zone number 1 of the Puget Sound Mills & Timber Company, and those of Merrill & Ring and the Goodyear Company. He has known Lou Duvall.

He has not examined the Lacey timber expertly.

He does not make it a practice to go and personally inspect every tract of timber he buys. He buys upon the cruises of a responsible cruiser.

Cross-Examination

He examined these cruises a week or ten days ago in Mr. Frost's office and went over most all of plaintiffs' lands.

Page 306—

Made no tabulated statement; was at it nearly a day; he took a section; took the num-

ber of feet per thousand of fir, spruce, cedar and hemlock; looked at the topography on the map to see whether it was rough or level, and looked at the quality of the timber that was given in the report as he would any cruise when he sent cruiser to look at it.

Page 307—

Then after examining one page that way he would turn to another page and so on, and was engaged at that for about a day. He took no memorandum. "I formed an opinion as I would from any cruise." Mr. Frost told him where the plaintiffs' lands were and they had a colored map of those holdings, too. They looked at each one of the sections and then referred to them in the books. He might not have examined all of the forties of the plaintiffs, but did examine nearly all the sections, the solid sections.

Page 308—

He has not now in his mind the data on any particular sheet without looking at it or the townships in which plaintiffs' lands lie, nor how the timber graded in any particular section without going to the records.

Direct Examination

The Lacey timber was worth \$2.00 a thous-

and for the fir, spruce and cedar on March 1, 1912, and approximately the same on March 1, 1914, and the hemlock if it was put into the water is not of much value, because hemlock sinks, but if it was milled on the ground, should have some value, ten, fifteen or twenty cents per thousand. The timber in Zone 1 of Merrill & Ring, Goodyear and Puget Mills & Timber Company, was worth the same on March 1, 1912, as the Lacey timber, and was also worth the same in 1914.

Page 309—

He logs from 500,000 to 750,000 feet of timber per day. He operates privately-owned logging roads and hauls his logs twenty, twenty-five and thirty miles at the present time.

Some of the country over which he operates is broken, abrupt. Some is level. They got out three hundred million feet of timber and pulled it up a 5% grade to market. There would be no difficulty in operating a logging road seventeen miles long with an adverse grade of not over one and one-quarter per cent, the favorable grade of from 3% to 4% to tide water. Such a road can be operated successfully. The addition of from six to ten miles in the haul may make a difference of a cent or two (per thousand feet

of timber) in the operation of the logging road.

He has bought some timber from Eugene France of Hoquiam, the timber lying twenty miles from salt water.

Cross-Examination

He has never been upon plaintiffs' lands to make any minute cruise of them. He has seen the cruisers' reports for the owners by parties that made the cruise years ago, and that helps him to base his opinion. He has seen McGillicuddy's, Pable's and Lou Duvall's cruises, some of which were made for the witness and some were made for other parties. Knows the Merrill & Ring Company; is not a stockholder in it; supposes the Merrills and the Rings are stockholders in the Merrill & Ring Company.

The witness' company is the Polson Logging Company at Hoquiam, in which Merrill and Ring are stockholders, own one-half the stock, the witness one-fourth.

Never heard of any of the interior timber being logged or sawed. The Northern Pacific is the only commercial railroad leading north from Grays Harbor, and it terminates at Moclips. Two logging roads only, Polson's and the Coats-Fortney, lead north from Grays Harbor, Polson's road extending thirty miles from

salt water and the Coats-Fortney road extending in a northerly direction about ten miles.

Page 310—

Moclips is in township 20, range 12. Polson's road terminates at present in township 21, range 11, whence it is twelve miles to the northerly line of Chehalis County, and then Jefferson County lies between Chehalis and Clallam Counties. There is not very much of a fire hazard to which the timber in the interior is subject. Does not personally know the extent of the burnt area in the interior.

In case of damage to the Straits' timber by fire some might log it to the Straits, but witness would take it to Port Angeles if he was logging that whole country, all of it. He would mill it on the ground or take it to Port Angeles. In case of damage to the interior timber by fire there is no way to get it out except by building a railroad into the interior. The streams where the Lacey lands lie run westerly and southerly to the ocean. By rail is the only way the interior timber should come or could come out. Witness would bring it by rail to Port Angeles. Cannot tell how many miles long such a railroad would be. That would all depend on the grade you would want to make in the survey and that

differs according to the judgment of the particular individual.

Page 311—

The length of a railway in a straight line from the Lacey holdings to Port Angeles depends upon the point on the lands that you want to measure to.

Page 312—

He understands that the Milwaukee started one which now runs from Port Angeles westerly to the Earles' holdings. Does not know how much the cost of that railroad was per mile. Has no knowledge on the subject. In testifying to the value of this timber in the interior the witness took into consideration the necessity of constructing a railroad into the interior of Clallam County.

He calculated on a road from Port Angeles to get that timber and all the other timber in there. A road from Port Angeles into the interior of Clallam County at an estimated cost of construction from \$15,000 to \$20,000 a mile. Did not put down the number of miles.

Page 313—

"I was taking the quality of the timber and the ground, and what you would pay for the timber and the way you would build a road. I could

just as easy take that timber out as our own and pay \$2.00 a thousand." Would have to build a railroad first to reach it. Did not figure in his calculations upon any definite length of road. The road would terminate eventually at Grays Harbor, but would not take that into consideration in making his figures. He took into consideration reaching that body of timber and taking it out to Port Angeles, the shorter haul, instead of to Grays Harbor. Made no estimate in detail as to cost of this road. Those things have to be gone into but can't be done without making a survey of the road minutely. It can be approximated, but not minutely. Witness undertook only to approximate it. The road might be built for \$12,000 a mile. It might cost \$20,000.

Page 314—

In going over the cruises in the books found that some portions of Clallam Lumber Company's timber are quite high. Some of the timber is more expensive to move than others. Others is more cheaply moved. It will all average up to a certain figure. Did not minutely calculate the length of railroad necessary to reach every section of the Lacey holdings. It was not necessary. At present hemlock logs bring

from \$6.00 to \$7.00 a thousand; spruce from \$6.00 to \$12.00; fir \$6.00, \$8.00 and \$11.00. On March 1, 1912, prices were higher than now. Lumber was about \$1.00 higher on all grades. The Grays Harbor market is about the same as upon the Sound. The supply and demand in the log market since March 1, 1912, have remained about the same.

For several years there has not been a ready sale at good prices for all the lumber that can be manufactured in the mills of Washington and Oregon. That the market price of logs and timber has a tendency to be lower to a certain extent. That condition of affairs has existed since 1907.

Page 315—

From his view point he would rather not have any large new area of timber opened up on the market. It would give him a better market for what he is doing.

In all probability existing logging operations in Washington are not now all highly profitable. The witness could stand a good deal more. His judgment as to the value of this interior timber was practically the same before he looked at the books. Two or three weeks ago he first found counsel for the defense that he was to be subpoenaed by the

defense. He was not asked what values he would put on the interior lands as compared with the lands on the Straits.

Witness knew what the lands on the Straits were assessed for. He knew it was assessed a good deal lower than his own. He looked that up because he goes before the State Board of Equalization every year. He wanted everybody assessed pretty nearly right so he would not have to pay all of the taxes.

The lands of the witness, twenty miles back, were assessed for over \$1.00 to every thousand feet of stumpage.

Page 316—

The hemlock was assessed from 25 cents to 40 cents per thousand feet stumpage in Grays Harbor County. The witness has had occasion to inform himself as to the value of timber lands all over the state. The witness has had occasion to find out what the interior lands of Lacey & Company were assessed for. He has been following that up for ten years, during which time he has formed his own personal opinion of their value.

He did not go down to see the lands in the interior any more than he goes to see his own lands. He has walked through them to see the

country and to see the timber twenty years ago, but has not been there since.

Page 317—

He has had cruisers' reports on all that country and its timber for the last ten years. He has had his own cruisers' reports on the character of the country; not that land, but the entire forest reserve of the Olympic mountains.

There is not a great deal of difference as to the quality, grade and value of the lands tributary to the Pysht and those along the Hoko. There is a little, but not much. They are approximately the same in value, grade and quality. It is all old enough.

Page 318—

The Merrill & Ring timber is older than Mike Earles' timber. The value between the younger timber and the older timber in 1910 and 1912 depends on what you want it for, sometimes the filling of an order requires old growth timber and sometimes younger. It all depends on what the market calls for. Does not know absolutely, but thinks the Milwaukee Railroad now terminates in the Michael Earles' holdings. Assuming that it does, he would not attach any greater value to the lands of Earles than to the lands of the plaintiffs.

Page 319—

Referring to the Lacey timber, witness says:
“If I wanted to move that timber in, the Milwaukee would soon build a railroad.”

WILLIAM J. CHISHOLM:

Direct Examination

Page 319—

Is a logger and has been for forty-five years, in Michigan, Minnesota and Washington. Has been in Washington eight years. Is general manager of the Merrill & Ring Logging Company. Thinks he is familiar with the methods and manner of logging in this part of the country, and is familiar with the cost of logging. Has built 400 or 500 miles of logging roads while he has been in the logging business. Is familiar with the operation of logging railroads.

Is acquainted with the value of logs in the Puget Sound market. He sells the logs. Is familiar with the value of standing timber to a certain extent. Has been over certain portions of the Goodyear, Merrill & Ring, Milwaukee Land Company, Continental Timber Company and Mike Earles' holdings, but not all of it. Has been across the Lacey holdings along the Sol Duc River from Lake Crescent to Mori, and from the Bear to Clallam along

the road. Is somewhat acquainted with the topography of this country. Is familiar with the conditions attending upon logging operations in the Straits zone and also in the interior. As to the difference in the cost of placing in the water the timber in zones 1 and 2, it depends on the quantity of timber to go out over certain roads.

Of two forty-acre tracts the one on the shore would log cheaper than one in the interior, but a big holding like the Lacey holdings would cost no more to log as against the other big holdings on the outside. The amount of timber is what makes the difference in the cost.

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The Lacey timber would log into the waters of the Straits as cheaply as the outside timber, owing to the fact of the big holdings and the country in the interior being level. Has just looked over the county cruises.

Probably all that timber down there is worth \$1.50 per thousand "irregardless." The timber on the straits' zone was worth about the same in March, 1912. It remained about the same on March 1, 1914.

Cross-Examination

Has been with Merrill & Ring thirty-five

years. Has not been down on the Pysht River very long. Just a day or so at a time.

Is not in charge of the work they are doing there. First went on the Pysht about seven years ago. Was there then two or three days going through the timber giving it a general lookover. Merrill & Ring then had between 25,000 and 30,000 acres on the Pysht and have about the same tract today. Next time he was down there was a year ago last spring, just looking over the country, looking more at the mouth of the Pysht River at that time. Was there three or four days. Did not then go through the timber or cruise it. Was there again in August of 1914, running around through the timber, seeing where they could locate railroads and getting an idea of the timber and the cost to open it up. Has been there three or four times this year, about three days at a time. He is not interested with Merrill & Ring in the Pysht timber.

Has an interest in the property in Snohomish County. They are beginning to open up that property on the Pysht, but have not yet cut a timber tree. Has not done any logging in Clallam County, or been connected with anybody that is. Has not specifically examined the business and returns of any operating logging institutions down there. Merrill & Ring

own the mouth of the Pysht River on both sides. Was on the Goodyear tract, over their road and landing where they are going to dump and where they are cutting their timber. Saw all the operation there was.

Was down in the neighborhood of plaintiffs' lands in June or July this year. Drove through with Dwight Merrill, Mr. Schofield, Burnett Ring and T. D. Merrill. Did not get out of the automobile to go in through the timber. Their purpose was not to investigate the timber in the interior. Did not at that time know anything about this law suit. Had heard some talk, but does not remember that anything was said about it on that trip.

At that time did not make any investigation of the timber or land down there with respect to this law suit. His attention was not called to plaintiffs' lands. Did not pay any attention to plaintiffs' lands more than any other timber. Always looks at timber no matter where he goes. A man who follows the woods always does. They passed remarks about this timber. Knew that the Lacey's were going to start suit, but did not know when and there was nothing talked about it at that time. Did not know until two days ago that he was to be a witness. Did not make any memoranda.

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Examined the cruise books the last two or

three days since he found out he was going to be a witness.

Does not know how many acres of plaintiffs' lands he investigated. He ran over different sections but does not remember the sections. Just so he could say that he had run them over. He took the county cruise and compared it with some of the Merrill & Ring cruises and the total amount, the total holdings of each party. He made such a comparison but did not put it on paper. Made it from looking at the county records. Saw the estimate of the timber, the Lacey timber, Merrill & Ring and Goodyear timber. He made no record of it, merely looked it over and compared it in his mind. He just took odd forties in different places and glanced through it. He looked at the totals and footed up the totals of the Lacey and Merrill & Ring timber. Don't know as anyone suggested his doing that. Saw people going up to look at the county records up here in this building. Did not know he was going to be put on the stand for a certainty until yesterday. When he looked at the timber books he did not know he was to be a witness.

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He looked over some of the Goodyear, Mer-

rill & Ring and Lacey timber, at just odd forties here and there, but no other timber. If the Laceys had one 40 acres in the interior and there was one 40 acres of timber land on the Straits, the Straits' timber would be more valuable because they could not afford to build a road into the timber for forty acres in the interior. It could be logged on the Straits with a donkey and without a railroad. There are operations under way now to take out the Merrill & Ring timber. It depends on conditions how much they will take out. If conditions may warrant they may put in from seventy-five to one hundred million feet a year. Should judge that Earles puts that much in, or probably more. His mill must cut that much. He probably puts in more than that. He figured out in his own mind, without making any memoranda, what it would cost to put a railroad down into the Lacey holdings after he heard Mr. Thomson's testimony yesterday.

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He had his figures made before Mr. Thomson testified, however. He figured it would cost about \$4,000 a mile to grade; that is, about \$80.00 a station, good and bad. You can buy good relayers now for \$29.00 a ton. He figured

about 98 or 100 ton to the mile. That is, \$2900.00 a mile for the rail.

They are having ties put on their road at 14 cents apiece, put on the cars. Some sawed ties and some hewed.

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Witness figured ties at 35 cents per tie and 2500 ties a mile, \$875.00. That is the rail, ties and grade. The spiking and fish plates and couplings would probably cost another \$1,000 and the laying would probably cost \$5.00 a station. That would be about \$175.00 a mile to lay it. Then there would be the ballasting. There is no set price on that. It might cost \$100.00 a mile or \$500.00. It is hard to tell. At \$250.00 that would be fair. That would pretty well cover it. The witness put it at about \$8500.00 a mile. He did not figure it down fine. The Lacey timber could come out to Angeles through Lake Crescent.

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A road from 42 to 45 miles long would put it into the center of their holdings. That is twelve miles into the timber. He has not been over there and taken the topography of that country, but you can get a logging road almost any place you want to put it. The elevation to

surmount and the rivers to cross are not very material.

Should not think it would be profitable to go into a place like that without putting in one hundred and fifty million feet of timber a year. Four locomotives would cost \$50,000. 60 miles of rails would cost \$180,000.

Logging cars run all the way from \$400.00 to \$1,000. The cars witness is using cost \$500.00 apiece. That would be another \$100,000. You would need 200 cars. Other necessary items of equipment are donkey engines. It would probably take ten donkeys. They cost from \$3,500.00 to \$4,000.00. Cable and everything for large donkeys would cost \$4,500.00.

He figured that for three and a quarter billion feet in the Lacey holdings, fifteen cents a thousand would build a road complete, twelve miles into the timber. He does not know the prices of logs in Clallam County in 1912 nor in 1914. He heard of some spruce sold there. He didn't look up the price of fir logs in the Washington market in 1912, but thinks they were \$6.00, \$9.00 and \$12.00 in March, 1912 and 1914.

Does not know the value of the Merrill & Ring timber. He thought the two values were about \$1.50; the whole belt in there; that is,

taking the group, taking the Lacey holdings and the Merrill & Ring group.

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He don't see any difference in the prices. That was for fir. He does not know; he hasn't sold much spruce, but has handled quite a bit of cedar. He knew there was a little spruce in those sections. The spruce and the cedar ought to be worth more money. They bring more money than the fir. The cedar and spruce would be worth \$2.00 to \$2.25 per thousand. The hemlock is pretty bad going down there. It ought to be milled there. It is not of any particular value down there. The Merrill & Ring timber was worth about the same, \$1.50. The cedar and spruce is the same as the cedar and spruce in the Lacey timber. In the Mike Earles' tract, same period, fir was about the same.

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He does not see any difference in the spruce and cedar. Very little difference, of any, except the fact that Earles' is on the railroad. Earles has a railroad in there and if the Lacey people operate their timber the Lacey people could have a railroad in there.

Does not believe Mike Earles is getting more than \$1.50 stumpage out of his timber. Could not tell what Earles' timber is worth. He is saying what he thinks. He does not know the exact value. "There is no one knows the exact value of a stick of timber until it is cut."

Re-Direct Examination

The Goodyear and Merrill & Ring timber, situated along the straits, requires a railroad and locomotives and cars and the other equipment detailed in the witness' cross-examination, to log it. It would require as much equipment to log 150 million feet of that timber practically as it would to log the Lacey's, though they might do with one locomotive less.

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In operating along the railroad of sixteen miles, as described by Mr. Thomson, whom the witness heard, he does not think it would require any more equipment than to log the Goodyear and Merrill & Ring timber. You might have to have a little heavier locomotive on your main line. The cost of hauling the logs after you get them to the main line, is very small when you are logging up into the hundred millions. The rails would be used over and over again.

He figured that eighteen or twenty miles of the steel would go into branch lines. It would be used over and over. As fast as a branch was cleaned up he would move it to another branch. He would take the steel and ties up and move them over to another branch. It would not take sixty miles of rail on the main line, which would never be moved. There is a difference in the quality and value of the hemlock in these respective zones. The hemlock, in fact, the timber that stands close to the straits, is more shaky and liable to rot than the interior timber. The interior timber is sounder and less shaky. Along the straits the hemlock is practically worthless until you get back a certain distance from where the high winds strike it. Back over in the valley there is much less shaky timber than along the edge of the straits. It will take in the neighborhood of 300 or 400 miles of branch line railroad to take out the Merrill & Ring timber along the straits, to log it economically. That includes spurs that are taken up and relaid.

It takes a great many miles of railroad to grade and build. The rougher the country the more railroad it takes unless the cost of

yarding is increased. By building more railroad the yarding is made shorter and that decreases the cost of logging. But a level country overcomes a good deal of that. In a level country you can reach further out in your yarding. It would not require more branch road for the same amount of timber on the straits than it would in the interior. It would only require sixty miles of railroad to log the Lacey timber, and witness was talking about starting operations there on the coast. The mere fact that timber is located along the straits contiguous to water, does not do away with the necessity of having railroads. You have to take your logs to a certain point to make economical logging. You have to have a central place to dump the logs into the water.

H. D. NEWBURY:

Direct Examination

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His business is logging, lumbering, saw mill, buying and selling timber, and has been for the past twenty-five or thirty years exclusively in Oregon and Washington. Has had the supervision of logging and lumbering operations and the construction and operation of logging railroads.

Is familiar with the methods of logging in

the Northwest. Is familiar with the cost of logging. Has been familiar with the market price of logs in the Puget Sound market for a number of years. Is familiar with the value of standing timber, some parts of which he has seen, in Western Washington. Has been on some parts of the Lacey holdings. Made a sufficient investigation of some parts of them to form an idea of the conditions attending logging operations in there and the value of that timber. Is familiar with some parts of the lands in the straits zone, range 9 west. Has been down on Clallam Bay. Has examined the county cruise of Clallam County.

Cross-Examination

Examined the lands in August, 1915. Mr. Frost asked him to go down. He went with Mr. Frost, Mr. McGuire, Mr. Riddell and a County Commissioner or two of Clallam County. Went in an automobile from Port Angeles.

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Went into the timber quite a bit. "I was in there about five days, in the timber traveling around through it." Did not particularly make notes as he was not there for cruising. Made a few memoranda for his own benefit. Has not them with him. Put them in a book which

he has not with him. Was in the timber land along the straits a part of two days. Had no cruise with him. Has been down there two or three times before this, but on former occasions did not make any examination of the Lacey timber.

Direct Examination

In making the examination of the Lacey timber he used an aneroid barometer and took the elevations here and there. Carefully studied the physical characteristics of the country in these respective zones with a view to ascertaining the logging cost.

Took elevations with an aneroid up Beaver Creek past Beaver Lake, down the forks of the Pysht and on to Clallam Bay. He took five days, making very careful observations of those things. He observed the character and condition of the country with reference to the possibilities of railroad construction and its cost in going through there, and made investigations of the character and quality of the soil along the Sol Duc valley.

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Went out and traveled around through the timber. Occasionally would count up an acre and measure it by putting a tape line on the

trees and figure them out. Put down no notes of the quality or grade of the timber, but observed it. If the Lacey timber was the same on March 1, 1912, as it is now, it was worth \$1.75 to \$2.00 a thousand stumpage. The timber along the straits is worth the same price. One timber is worth just as much as the other. On March 4, 1914, they would be the same. In stating that price he referred to the fir, spruce and cedar, but not the hemlock.

Cross-Examination

There is no difference in the quality of hemlock in the respective zones. Has never bought or sold timber lands in Clallam County. Went down there about six years ago to buy some land for himself at the mouth of the Hoko River. Has not purchased any lands in any considerable quantity in the last five years, during which time there were but one or two sales that he noted in the papers that he knows of. The largest one was in Oregon. That is the last one. Has not noticed very many and does not think there has been very much done in the last four or five years.

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As to the tendency of the timber market in the last four or five years, if you go to the

holders it would be on a standstill. That is, if you want to buy something, but if you want to operate, it is downward. Has had charge of logging operations, logging railroads in the State of Washington, at Klamath, Eutalla, Yakima, Klamath County, on the Yakima River, and he built some roads up in King County for himself. Examined the county cruises to run over them and see how much the timber runs. He had a map with him all the time.

Was down in the timber there for five days. In the plaintiffs' timber principally most of the time, and he spent some little time down at Clallam. Was in the straits timber parts of two days, down around the Goodyear timber. In going through the timber they stopped for section lines and section corners so as to locate themselves on the map.

In saying that the interior lands have the same value as the lands on the exterior the witness took into consideration the fact that there is a longer haul.

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The greater cost of operating is in the straits' timber. After the plant is in the only difference is that you will operate cheaper on good lands than you will on rough country. Where you are building roads up through

mountains and have steep grades and high cliffs to take off it costs more to put the logs on the railroad after the plant is in. He did not go into all of the Calawa country, some portions of it. Was in townships 29 and 30-12. Went up one branch of the Sol Duc to where the water turns and runs the other way. Was in townships 28-13, 28-14, 29-13, 29-12 and 30-12. Made an observation of all those townships but did not go through each five-acre tract. Went through some parts of it. Took up a few sections here and a few sections there. Witness shows on the map the route he took. Witness says that he did not go into the Calawa country.

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His experience is that after the logging plant is in, the transportation itself does not cut much ice in logging. That is not the expensive part of it after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. He takes into consideration the upkeep of the road, but overbalances that by the different localities you log in. The upkeep of the road is not the expensive part of it. The expense is in that the timber on the straits is in a rough and broken country and you have to

have steep grades and high points to take your timber off; narrow canyons to build your roads in and every time you fell a tree it will fill the canyon up and you have to dispose of that, and it is expensive in a rough country; while in a nice smooth country you can build an inexpensive road, can work right along and get more logs and do it for a whole lot less money. Did not go into the Mike Earles' timber. Does not know whether the timber in the straits in which the railroad has been built is worth more than where the road was never built, as he was never in that timber.

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He will say that the Lacey timber is worth just as much as the Goodyear timber. It is worth just as much as the timber on the Pysht River. Would make no difference if the railroad was built into it. He believes you can log the interior timber off for less money than you can the straits' timber; that is, the fir, cedar and spruce. He puts no value on the hemlock at all. He does not think there is any. He took elevations in the Calawa country, going up the creek after he left the Sol Duc. The highest point there down in the canyon was 765 feet. He was not down in the Calawa valley, did not get in that far.

Is making his value on what he saw. Is not placing a value on the Calawa timber. In valuing the timber which he had in mind he figured on taking it down to the Pysht or the Clallam. It could be routed either way, and would then tow the logs to market.

He figured to a certain extent in estimating the operating cost. He figured it out on paper but did not make any memorandum.

He figured no other points to which to take the timber than the Pysht or Clallam. He did not figure the route to Port Angeles. He did not take into consideration that both sides of the Pysht were already owned by one company. If told that the water front was already owned it would change his idea of the value of the timber. Thinks it would make no difference whether there was point of access there or not. Could not say what proportion of plaintiffs' lands were level. Has testified to valuations on plaintiffs' lands assuming, not that they were altogether level, but that they were better than the lands on the straits. Does not know what proportion are level or what proportion are rough.

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Has known of no sales in the interior of Clallam County in five years. Has known of

no sales having taken place at a higher figure than \$1.00 a thousand. Has known of a sale four years ago, but of none since then.

Knows of nothing that has taken place in the last five years that would increase the value of timber in the interior of Clallam County.

Re-Direct Examination

The timber on the straits cannot be logged without a railroad any more than the timber in the interior.

Re-Cross-Examination

Did not notice any burns in the timber in the interior. There were some old burns and lots of them. On the way out from Sol Duc valley to Clallam Bay he noticed a very extensive burn. After he got over the ridge and coming down to the straits on the straits side of the summit did not notice any burns to amount to anything.

Re-Direct Examination

In passing from Beaver prairie over into the Calawa he took the elevation of the pass with an aneroid and got 765 feet.

Beaver prairie read about 425 feet. The elevation of the pass was approximately 300 feet higher than Beaver prairie. No, he does not think they were down in the Calawa. They

had been clear over into the Calawa country. Were in sections 10, 11, 14 and 15, down in that country.

The timber of the plaintiffs in zone number 2 was the best I ever saw. It was as good as anybody has. The logging conditions are fine. Does not think persons traveling in an automobile from Clallam to Forks and back up to Sol Duc Springs could form an accurate opinion as to that timber. Unless they went out into it some they could not tell much about it. They could see a little along the edge possibly.

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There might be a little more fire risk in the interior than there would be out on the straits.

CHARLES McGUIRE:

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Direct Examination

Is a timber cruiser, buying and selling timber for Eastern timber buyers, has been for several years. Is familiar with the value of timber in Western Washington.

Is familiar to a certain extent with logging and logging camps and the methods and manner of logging. Is interested in some. Has examined portions of the Lacey holdings in the

interior of Clallam County. Is familiar with and has been over and upon the timber of the Puget Mills & Timber Company, the Milwaukee holdings, the Merrill & Ring and the Goodyear holdings along the straits. The plaintiffs' timber, which he saw in the Sol Duc valley, is good timber of good quality, and good ground to log. Was in the timber shown on the map in Zone No. 3. It was more rolling over there and rougher. Along the straits it is more cut up with ravines and narrow canyons than it is in the interior. He observed the character of the country in the straits' zone and took aneroid readings of the elevations. In a general way watched the character of the soil and the land through these zones to determine the cost of railroad construction. The land in the valley on the Sol Duc, the Calawa and west of the Forks would be agricultural land when it was logged. He heard the testimony of R. H. Thomson in this case.

In taking out the plaintiffs' timber to the Pyhst, or Clallam, on a railroad, there would be very little difference in the relative cost of placing in the water, the straits' timber as compared with the plaintiffs'. On March 1, 1912, the Lacey timber, for the fir, cedar and spruce, was worth \$2.00 per thousand. So

was the straits' timber. He has examined the County cruises and bases his judgment as to the value of this timber on what he saw when he was down there and from his examination of the county cruises.

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Was in the timber practically 5 days. Went from Lake Crescent on the county road, accompanied by one of the Commissioners who had cruised, and run a compass through the timber.

At different places stopped and picked up the section lines and went to the corners so as to be certain of the ground, and took a general look around of the quality and quantity of timber and at one time went between five and six miles from the road. Referring to a memorandum, states that he was on sections 10, 11, 14 and 15, and after crossing the river, crossed into sections 23 and 24, in township 29, range 12.

Says that one riding in an automobile from Clallam to Forks and back up to the Sol Duc Hot Springs could form an accurate opinion of the quality, quantity and character of the timber in the zones.

The Lacey timber was worth the same on March 1, 1914, as on March 1, 1912, and so was the Straits' timber—\$2.00 per thousand.

Is not connected with Merrill & Ring, Milwaukee Land Co., Puget Mills & Timber Co., or with the Laceys.

A man riding along the road in an automobile could form an opinion as to the character, quality and value of plaintiffs' timber, but not as good an opinion as by going into the timber away from the road in different places.

Cross-Examination

Is not employed by any of the timber companies. In answer to a question put by counsel for defendants—has done some work for a branch company of Merrill & Ring, but for none of the others. Did considerable cruising in Clallam County for the Continental Timber Company—another name of the Milwaukee Timber Company. This was down at Twin River and at the Pysht River along the straits. In 1912 and 1913 he cruised some of the interior timber for the Menachi Wooden Ware Company.

He looked over two quarter sections near Lake Crescent for the Continental Timber Company. In 1912 cruised 120 acres on the Hoko River for Mr. Blacker of Everett.

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Was in there for two months and a half or

three months for the Milwaukee Railroad Co.— one tract near the mouth of Twin Rivers and the other on the Pysht. That was straits' timber. The five days he was on the Lacey timber is all he was ever on it. The entire trip was six days. Was on the timber practically all of the time he was in there. Operated a logging proposition in Idaho in 1893, 1894 and 1895. Logged mostly yellow and white pine.

Was engaged in Idaho about fifteen years. The saw mills where he worked had a capacity of from 15,000 to 50,000 a day. Afterwards was with the Blue Mountain Lumber Co. in Washington, in Asotin County. Is now logging near Port Ludlow, Jefferson County. He looked after the cutting of the timber which is being put into the water.

Their railroad is now about 5½ or 6 miles long. Was with the gentlemen who testified before, on the trip over to the interior of Clallam County. They were all together and went over the same ground. Has been over a portion of the county cruises, both before and after the inspection of the timber. Examined them in the Court House in Port Angeles with the assessor and Mr. Riddell and Mr. Frost. Before going in, the Lacey holdings were shown on the map. The witness took different sections, seeing how

the timber averaged, the quality of the timber, and took it from the cruises. Made no memorandum of that. Made a compilation on two sections—31 and 32, township 30, range 12 west. Some one called his attention to it—don't know who. Looked the cruises over at the time and then was on the section personally after he went down there. Don't know if he picked any of the smallest sections at all, just picked them out as he leafed over the book. Did not pay as much attention to the grade as to the quantity. On the sections he examined when he was out there he took a number of them and added them together to see what they averaged, and when he came back he found them on the county cruises to see how accurate the cruises were.

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Has the memorandum and exhibits his book. Section 31-30-12 has 107,885,000 ft., and section 32-30-12 has 107,883,000 ft. Made the memorandum on August 14th, 1915. Exhibits other memoranda made in connection with the examination. When finishing that township witness went through those two sections, saw both quarter posts on both sides of both sections. Counted up different acres and half acres, trying to satisfy himself that the amount

of timber shown in the cruise was on the ground. Made memoranda on section 32-29-13, was at the quarter post between 32 and 5, township 28, range 13. Wanted to be sure what ground he was on and went to the corners for that reason. Gives the distances to the corners.

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The memoranda is scattered through the book in different townships. The book contains all of the memoranda. The first memoranda, shown on the page he read, showing sections 31 and 32, is practically the kind of information shown through the book.

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Made no tabulation of the quantity or grade of the Lacey timber. Formed his opinion of the grades and quality from what he saw. Would take an individual section here and there. Sections 9, 10, 11, 2 and 3 are marked "rough ground," "timber," "rough." They are higher on the mountain. Sections 31 and 32 are level ground. Section 32, shown in the memorandum, has 37,000,000 feet, is marked "rough."

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It limbs down closer to the ground and is not as good quality. Some are marked in the memoranda, "extra good quality." These are

all the memoranda that he made. Can give the amount of timber on four sections together that he was on and looked at. The amounts he cruised substantially agreed with the county cruise. Remembers how sections 31 and 32 grade on the county cruises.

Does not think he could grade any others from the county cruises. Could give his own opinion on the grade.

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When he went down there he was asked to go by Mr. Frost and form his honest opinion regarding the value of the timber. He knew that there was litigation on before he went down there. Only memoranda with respect to the straits' timber was in just comparing the cruises. Has no memoranda in the book, just an opinion comparing the cruises of the county, looking over part of the Lacey holdings, part of the Merrill & Ring holdings and the different grades to see how the timber averaged one tract with the other. Took some ten or twelve sections of the Merrill & Ring holdings, made no note of it, and cannot give it exactly, compared them with what he saw of the Lacey holdings. Could not give the number of the sections, did not count them up. Could tell from his book

the amount of corners he was through and that would show the sections he saw.

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Made no memoranda of the straits' timber, only just looked it over. Just made a comparison from the records. Has been on the Pysht River, through part of the Merrill & Ring timber. Has been through the Milwaukee timber and parts of Earles' timber. As to age—part of Merrill & Ring's timber is a little older than the Goodyear timber and plaintiffs' timber in the interior.

That does not make the Merrill & Ring timber any better as some of it is on the decline. The witness for himself would prefer timber in the interior as for quality because in all timber there is always more or less defect with ground rot, wind shake and dead tops. This is allowed for in the county cruises. He would expect that in Clallam County's cruise they made a reduction for that.

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The straits' timber being on the decline, the witness would prefer the timber in the interior. Some of the timber on the Pysht River and the Goodyear timber is ripe and has been for years. Fir timber grading 48% No. 1, 30% merchanta-

ble, and 22% No. 3, on the log market today is better than timber running 35% No. 1, 42% merchantable and 23% No. 3, but the second timber as graded above may be just as old as the other. Never made any sales of fir, spruce or cedar in the interior of Clallam County and knows of none personally. At the present time hemlock has very little value. The hemlock he saw was very inferior quality and not much of it and it would be hard to put a value on it.

That would apply to timber both on the straits and in the interior. In going into the Calawa River territory, the highest elevation was 765 feet and on the divide between the Sol Duc valley and Clallam Bay the highest elevation is 825 feet.

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The country about Calawa is broken. None of the Lacey timber is on what he would call rugged ground. As to rough ground, did not go over enough of it to pass an opinion. Is familiar with and has been over a part of Mike Earles' timber.

Earles' and Merrill & Ring's timber are worth the same. The market value of Merrill & Ring's timber near Pysht and the Earles' timber per thousand feet was practically the

same thing in both 1912 and 1914. Does not think they have changed any to speak of. Comparing those two with the Goodyear timber, it is about the same.

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He takes into consideration in forming this opinion, the fact that the Earles' timber is now being operated and is upon the railroad. He attached no greater value to the Earles' timber than to the Merrill & Ring's and the Goodyear timber. Witness does not consider it any more valuable than the timber in the interior because there is enough in the interior to justify putting in a road to log it.

At the present time does not consider Earles' timber of any greater value than the timber on the Pysht and the Goodyear timber. Merrill & Ring and Goodyear have much the same facilities for logging as the Earles' timber. In regard to value they are the same. Does not think the railroad adds any valuation to Mike Earles' timber, and on that same basis he figures the lands of the Lacey people in the interior are of equal value to the land on the Straits. The fact of being in the interior without a railroad or in the exterior with a railroad cuts no figure as to valuation in large holdings.

As a general thing the logger puts in his own railroad.

Witness has a memorandum showing the Lacey people have some 41,000 acres. In the witness' judgment, if they had 80,000 acres their tract would be of greater value. The bigger the tract of timber, he thinks, the more valuable it is. The bigger holdings would have the more value.

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After the road was built it would reduce the cost of the road by hauling out that many more feet on the same railroad.

Did not figure the cost of a railroad, but in his judgment, it would be in the neighborhood of from eight to ten thousand dollars a mile. Witness figured on taking the timber to Clallam Bay, which would take about 12 miles of road to reach the edge of the Lacey holdings, so the railroad would cost from \$96,000 to \$120,000. Did not figure the equipment, but formed an opinion. Its cost would depend upon how many million feet would be logged a year.

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To make it profitable on tracts of that size from 150,000,000 to 200,000,000 feet should be logged in a year, taking about four locomotives

and ten or eleven donkeys. He figured in his own mind the cost of railroad and equipment in estimating the comparative value of the interior timber with the exterior timber. 10c a thousand would build the road and pay for putting it in there ready to log three billion feet of timber. That would be the additional cost of putting the road in and logging the timber—that is, 10c a thousand feet.

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That counts the cost of building the road into the tract of timber and figures nothing in addition for equipment, because they would have to have equipment for logging either the straits' timber or the interior timber, and therefore, the witness would not take into consideration the equipment in comparing the value of the interior timber and the straits' timber. The cost of equipment would depend entirely upon the output. On a basis of logging from one hundred to two hundred million a year, four locomotives would cost about \$10,000 each; the donkeys would cost about \$4,000 each; relay steel runs from \$29 to \$30 a ton; ties for logging railroad about .25 to .30 a tie; fish-plates and spikes about \$500 a mile. Was in court when Mr. Chisholm testified on that same

matter and heard his testimony. Is not giving everything he heard Mr. Chisholm testify. He knows practically about what those things cost. Never made any memorandum of it. Has bought logging locomotives.

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If the Lacey timber was a tract of 160 acres instead of 41,000 acres it would not have the same value. A small tract that way is hard to sell except to a merchantable logger and they give you whatever they want to. It is pretty hard to value a tract (small) in the interior. A larger tract of timber is worth more than a smaller tract. He would not care to set a value on a small tract.

Eventually the most economical method of taking out the interior timber will be by railroad to Port Angeles. Didn't figure it close; thinks all of that timber ought to go out by railroad. The price of fir logs varied some in 1912, but was practically the same as it is now. The price was \$6, \$9 and \$12. In the winter of 1911 and spring of 1912, they ran from \$6, \$8 and \$11 to \$6, \$9 and \$12. From March, 1913, to March, 1914, the market has been about the same. Noticed some burns in the interior timber, one west and north of Lake Crescent,

about 15 miles long. There is a burn in the Sol Duc valley. Doesn't know how large. All he could see from the road was not over 40 or 80 acres.

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Observed the burn on the straits, after crossing the divide going into Clallam. There is a burn on Beaver Lake on the side towards Sol Duc. Timber in the Sol Duc valley is on level ground practically free from underbrush and would be very hard to burn. Timber is more subject to fire risk that is on rough and hilly ground. Does not know about the fog belt and rain fall as between the straits and the interior.

Thinks the fog belt extends all over Clallam County and protects the timber, not as much as in the exterior, but thinks they have plenty of fall for fire protection. That would not affect the value. Was at Clallam Bay two nights, did not spend the night in the timber. Spent the time going in and out mostly after night, hardly ever left the timber until it was almost dark. Only one evening went in before the lights were turned on.

Re-Direct

Is very familiar with the character and

quality of timber throughout the State. "It is the best tract of timber I have ever seen."

C. I. WANNAMAKER:

Direct Examination

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Lives at Port Townsend, Jefferson County. Is a logger and merchant. Is chairman of the Board of County Commissioners. Logged on the Hoko River and West Clallam. Put his logs into salt water at the mouth of the Hoko River and in Clallam Bay. Has been a logger in Washington for 8 years. Is to a certain extent familiar with logging methods.

Is familiar with and has bought standing timber in Western Washington and in Clallam County. Recently inspected the plaintiffs' timber. Has inspected and is familiar with the timber along the straits and is familiar with the physical characteristics of the country in the straits' zone and in the interior. Has been across from Clallam Bay over Burnt Mountain near the Sol Duc and around the Forks. Observed the physical characteristics of the country with reference to the possibility of railroads and the character and condition of the soil. In his opinion, the relative cost of placing in the waters of the straits, logs cut from timber in

the straits' zone, as compared with the cost of putting in the water logs cut from timber in the interior is practically the same.

The Lacey timber was worth from \$1.75 to \$2.00 a thousand in March, 1912, and in March, 1914. In his judgment, the straits' timber on March 1, 1912, and March 1, 1914, was worth about the same. Has gone over the county cruises some and is to a certain extent familiar with them.

Cross Examination

The Goodyear property was tributary to his logging operations in Clallam Bay. Operating the property known as the Brach claim, the Thomas Fisher, and around East Clallam.

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He owns some property there at the present time and on the Hoko River, 80 acres that belongs to Mr. Seymour of Tacoma, part of Mr. Talbot's property and a Mr. Johnson's. Has been engaged in logging 8 years. Logged at Clallam Bay 3 years. Cut off five or six hundred acres, about 10,000,000 ft. Did not have a railroad. The farthest back he went was about a mile and a half. That is on the Hoko River, and about three-quarters of a mile back from Clallam Bay. Had no railroad.

At the Hoko River he boomed his logs in Clallam Bay and the same with his logging at Clallam Bay. The cost per thousand of logging these 600 acres varied from \$4 to \$6 a thousand. It cost from \$4 to \$6 a thousand to log that timber. Saw the Lacey timber in August, 1915. Made the same trip as the other gentlemen who testified, made substantially the same sort of investigation. Made no memorandum. Made no tabulations of the Lacey timber as compared with the straits' timber. Investigated the county cruises recently, in 1912 and 1913 with reference to other lands—recently in reference to the lands in controversy in this suit. Examined them in the County Assessor's office just before going over on the tour of investigation. He just looked over the cruise books of certain sections to see how much timber there was in those different sections. He looked over the straits' timber, both in 1912 and 1913, in looking up timber for himself for the purpose of purchasing. He had been through part of Merrill & Ring's timber. Was over it in 1912 and 1913. Did not examine the cruises of the Goodyear timber in 1913.

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Was in there just to see the quality of the

timber, and the character of the land it was on. After looking over the different sections he went down into the timber, the purpose being to see if the timber had been fairly cruised. Took no memoranda. Did not go back and look at the sheets after he returned, but remembered some of the cruises on the different sections. Does not know how much land he investigated the area of.

Had a map of the lands, colored in green, on the timber tract. Was investigating a good part of the entire tract colored green; that is, drove through it, stopped on several occasions and went into the timber. So far as any comparison is concerned he did that all in his head.

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In 1912 and 1914 he put practically no value at all in hemlock over in the interior or exterior lands. If plaintiffs' lands were taken out of the interior and put alongside the lands on the straits, they would be no more valuable on the straits than they are where they are, on account of the character of the shore-land, getting that timber to the Harbor. There are only two or three harbors along that coast. The Lacey tract and the straits' timber would be practically of the same value if the Lacey tim-

ber were taken out of the interior and placed along the straits' timber in the same relative situation. The timber is practically of the same character and quality and about the same grade. In 1912 and today they are of the same market value as they would be out upon the straits. The fire risk is about the same in each tract. If the straits' timber burned it could not be immediately operated and saved. You have to move that timber to some place where you could hold your logs. You have to put it in something to get them there. You have to put in a logging road.

In the interior timber, in case of a burn, you would put in a logging road if you wished to get it out. The road to the interior would be a longer road—about 18 miles to the Lacey timber from the mouth of the Pysht.

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Would consider the plaintiffs' timber at very little disadvantage as against the Merrill & Ring timber.

The lands of the Pysht are no more valuable than are the lands in the interior where the logs would have to be hauled by a railroad 18 miles long. Does not know of any timber being sold in the interior of Clallam County. Doesn't know of any sales being made there. His judg-

ment of values is not based upon knowledge of any sale of such timber in Clallam County.

Re-Direct Examination

The map shown him is the map that was taken with witness, and which he spoke about. Witness purchased timber lands in Clallam County himself. Witness is asked how the timber compared on that land with the Lacey timber and was objected to.

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Defendants offer to prove that the timber the witness purchased was not as good in character or quality as the Lacey timber and that he paid \$2 a thousand for what he purchased.

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The offer to prove was denied. Speaking of the Lacey timber, the witness says: "It is the best tract of timber that I ever saw."

R. D. MERRILL

Direct Examination

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Lives in Seattle. Is in the logging business and timber and lumber. Plaintiffs concede that the witness is a thoroughly equipped and experienced logger and timber owner and knows all about the value of timber in the State of

Washington. He is a member of the firm of Merrill & Ring, owning an extensive body of timber in Clallam County. Familiar with the timber on the straits, of his own and with plain-tiffs' timber.

Is familiar with the characteristics of the country on which the timber stands. In arriving at the value of the timber the elements or factors to be considered are, the cost of operating and the quality of the timber. The cost of operating depends on a number of things, which are the lay of the ground, quantity of timber per acre, character of timber, whether there is water for donkey engines, character of the soil. If the ground is broken it makes a difference in the cost of falling and hauling. If level, is easier to get the logs to railroads and easier to build railroads, less wear and tear on the machinery and cheaper in every way. The value of the timber is a factor and would also have to consider the fire risk.

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Also the amount of timber in the tract. It always costs a good big sum to open up a tract of timber. If the tract is small, it costs more per thousand feet of timber and if it is large it costs much less.

If the timber is surrounded by other timber,

no matter who owns it, that increases the value of the timber. The size of the timber is to be considered. Medium sized timber is always easier to handle than large sized. Very large timber and an uneven stand is less valuable as it is necessary to have machinery heavy enough to handle the heaviest timber and such machinery is awkward to use in handling small stuff. If the stand of timber is the right size and even it can be handled with a Ledgerwood engine and that is more economical than logging with a donkey. Timber located where operations can be carried on continuously can be logged cheaper. If the logging can be carried on only five or seven months of the year the cost is greatly increased because of the fixed cost and depreciation, which are just as great whether operating or not. Very old growth timber is less valuable than thrifty young timber. In falling the old growth timber is more brittle and more liable to break. A smaller healthy tree springs. A heavy old growth tree in falling crushes right through and often breaks the log or splits it. On rough ground in falling timber is difficult to buck; that is, to saw into logs.

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If timber is on a high place and there is a

depression the tree must be blocked before sawed or the ends will pince the saw and you must use wedges to pry the tree apart, which all takes time. Young growth timber holds out a cruiser's estimate much better than old growth. Being an operator the witness has had experience with both kinds because they compare the cruisers' estimates with the results of the sawyer. Operators find that in young growth timber the cruiser's estimates always run better than in the old growth. Old growth timber usually falls short because of the great defects in the old growth timber which the cruiser cannot see from the outside. Few cruisers take an account of this as they have no opportunity to check up the estimates as an operator does.

The straits' timber is good timber. It is old growth principally; there is some young timber but the bulk is old growth. All the ground on the straits is rough. There is some smooth ground, but in characterizing it as a whole it is rough ground. The straits' timber has all got to be railroaded to get it into salt water no matter where it is located. In the straits the construction and operation of a railroad is moderately difficult. Very little of the timber will go direct into the water. It usually has to go around a draw. Has to go to a harbor first

any way, and there are no harbors except at Port Angeles. In the straits' zone the logging branches and spurs are also difficult to put in on account of the roughness of the ground.

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The logging conditions in plaintiffs' timber in Zone number 2, on a large part of that are extremely favorable. The ground is practically level and there is a great deal of gravel in the soil so the railroad tracks can almost be put on the ground without any work at all. In the straits' zone most of the soil is clay, with very little gravel to make a good roadbed, especially in a rainy country. It would be necessary to haul gravel and ballast the road carefully. Where gravel is not in place that is quite an added cost in the building of the road. The timber in Zone 2 is good timber. The poorest timber in that zone is along the wagon road. It is medium growth timber, it is not old growth and not sapling. There are a great deal more defects in the straits' timber on an average. One part of the timber on the Calawa is old, but is not as defective as is the timber in Zone 4. Witness does not know that from personal inspection but from the county cruises, which state that the straits' timber is old and deteri-

orating and the tops are broken. The fire risk in the straits' zone is not as good as in the timber in Zones 2 and 4 to the west, that flat and level country. Timber in a flat country very seldom burns, but on a hillside if a fire gets started it follows up through like it would out of a chimney. The fire risk in the interior is better; not so much danger in the interior. It is a wetter country than the other, too.

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In Zone number 2, as to comparative cost of logging, it is good ground, most of it, and can be logged as cheap as any timber in the state. He thinks it can be logged to cars cheaper than any timber in the Pacific Coast; that is, putting it on the cars ready to haul to market. In Zone 2 there is a little rough ground on the outskirts, as there is in any tract of timber, but the preponderance, he thinks ninety per cent of that belt is level ground. That is nice ground in Zone number 4 there. It is rather level there (pointing), parts of it. Merrill & Ring own a little timber in there themselves. That tract and parts of Zone number 4 will not log as cheaply.

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The North portion of Zone number 4 is

practically level ground. The bulk of that timber is the finest logging show he knows of. It can be logged and put on cars for much less than any timber in the straits. Take an average of the whole of plaintiffs' holdings, including both the Sol Duc and Calawa valleys, the timber can be logged cheaper on to cars than the timber in the straits' zone. Neither the Pysht or Clallam Bay are the right place to handle logs from the Lacey timber, but assuming that they are (which is not true), a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars and this cost divided among three billion feet would be a little over five cents a thousand as the cost of the railroad.

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In the Pysht tract witness has about seven hundred millions and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, which would make about six or seven cents a thousand, so that there is practically no difference in the two tracts, it costing no more to build a railroad to open up one than the other. It would of course cost a little more to haul from the interior than it would from the exterior. It is a little bit longer. In Che-

halis County the Polson Logging Company is hauling 25 miles, which is practically the distance to the center of the Lacey tract, and has kept an accurate account of the cost of hauling in every department of the business. Merrill & Ring are logging another tract in Snohomish County where the haul is about seven miles, practically the same as they will have to haul the Pysht tract. The ground is very level only the timber is not so heavy per acre. That is, the timber both in Snohomish and Chehalis County is not as heavy a stand. The 25-mile haul of the Polson Logging Company cost them forty-two and three-tenths cents a thousand to put the logs in the water, which includes hauling and the cost of yarding the logs to the main line.

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By yarding he means switching; that is, the taking of the cars from the logging spurs to the main line. The Merrill & Ring people are hauling seven miles and it costs them thirty-seven cents a thousand for doing the same kind of work, a difference of five cents a thousand between the long haul and the short haul.

That includes the fuel and maintenance of the road but does not include depreciation. Depreciation on the main line of the Lacey tim-

ber would be much less per thousand stumpage than on the Pysht tract on account of the greater amount of timber. Logging on rough ground is much more expensive than on smooth ground. The witness' Company finds that falling on rough ground costs twenty-one cents per thousand and more than it does on level ground. The branch construction on rough ground, according to their experience, costs forty-four cents a thousand and on level ground about twenty-five cents a thousand; a difference of nineteen cents. This comparison is based on two tracts of timber having about the same stand per acre; that is, fifty thousand per acre in each tract.

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Where the stand of the timber is much heavier per acre there is another added saving which is very great and which might make a difference of fifty cents a thousand; that is, if one tract has twice as much timber on an acre as another tract, the one with the heavier stand can be logged for fifty cents a thousand cheaper than the other. For example: A rough tract with a stand of fifty thousand per acre and one with one hundred thousand per acre, the latter would log at least fifty cents a thousand cheaper than the former. The county

cruise shows that the Lacey timber in Zone number 2 ran about eighty-eight thousand per acre. The Ruddock and McCarthy about sixty-six thousand in Zone 4. Zone 3 runs less than Zone 4. He remembers the eighty-eight thousand stand because it struck him as being a wonderful stand of timber. The stand in the Pysht tract is about fifty thousand per acre; the county estimate shows fifty-two thousand and the witness' own estimate is about fifty thousand.

The stand in the Earles' holdings is thirty-nine thousand. The Milwaukee Land Company's timber is a much better tract of timber than any along the Coast, and the Goodyear holdings are about the same as the rest. The timber in the interior is worth fully as much or more than the timber on the straits. As a whole, he knows it is worth more, taking the straits' timber as one tract and the Lacey timber in the interior as another. The Laceys have practically all the fir except the State land and some of the Milwaukee's.

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The Lacey's is a more valuable tract of timber. Merrill & Ring's hemlock is poor, Earles' hemlock is poor and so is most of that on the Lacey tract. Where the hemlock grows

with the fir it does not amount to much. A solid stand of hemlock grows thrifty and is worth considerable money. The witness was interrogated about the conspiracy and denied any knowledge of any such thing.

Cross Examination

Is a member of the firm of Merrill & Ring, owners of a large tract of timber on both sides of the Pysht, owning both sides of the riev'r at the mouth.

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They first began buying land in Clallam County in 1880. Were the first purchasers. They had the pick of the county and bought timber where they thought it was best to buy. Conditions at that time were not the same as now; at that time they were logging with oxen; railroad logging was not known in any part of the country.

Bought a few pieces of land in the interior of Clallam County within five years. Interior timber is worth just as much as that on the Coast. There is no difference in the value; in fact, he believes the Lacey tract and the timber along it is worth more than others is. The timber that they bought recently was all poor quality; part of it because it was in the Pass

from the Lacey holdings to Lake Crescent, which is the way the Lacey timber will come out to Port Angeles in preference to any other port along the coast. Has not been familiar with sales of timber land in the interior during last ten years. Has known of some sales, has heard of them, but does not know any definite figures. Has known of no sales in the interior at a price greater than one dollar a thousand for fir and not known of any on the exterior greater than a dollar a thousand.

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The particular piece in the Pass between the Lacey holdings and Lake Crescent was bought because he thought it was a good piece to own as the railroad would go through there some time and that would make it valuable. Does not think he can hold up any one. If they want to go through there they can whether he bought or not. Just one piece; thought it was a good buy; lay handy to the lake, but other pieces are not extra good timber and are not located particularly well. He bought them cheap. Paid about a dollar a thousand for the old growth fir.

Figured he was paying about a dollar a thousand for the old growth fir. He bought the piling per lineal foot. Did not figure it

per thousand; if he did it would not buy it. Is familiar with the plaintiffs' lands, has been over a considerable portion before they bought them, but not recently except to go through on the road. Was there a month ago and before that in 1900, when he went over two or three sections, went down the Forks and stayed around two or three days.

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He inspected particularly in sections 31 and 32; did not cruise them, simply made a run through to see how they ran. Was there a couple of days. That is his entire experience with those lands except that he has examined the county cruises. The most timber they have owned he has not inspected any more carefully than he inspected the Lacey timber. Looked at the county cruise a few days ago in Seattle.

He gave the county cruises a more thorough inspection and more time in the examination than in examining estimates of timber he was buying. Spent eight or ten hours examining the cruise of the forty-one thousand acres. Did not make a tabulation of the result, but other people have. It is not the witness' custom to make any tabulation of cruises he is inspecting. It is not a custom of any timber man that he knows of. Is acquainted with some

burns in Clallam County but does not know as he is acquainted with every burn there. He supposes he knows the location of the largest burns. There is a large burn on both sides of the ridge running between the straits and the interior. Does not know whether there are any large burns in the interior. The burn there is on a steep side hill and the Lacey timber is not on that steep side hill.

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The fire risk is lower on level ground than it is on rough ground. There is not as large a burn on the straits' side of the summit as in the Sol Duc valley. There is not as much land there and there could not be as large a burn there. He does not know as there is as much timber to burn there. Has made no examination of the plaintiff's timber in the Calawa valley. Knows the ground there is not as good ground as the other. Knows from the county cruises it is not all logging ground. He has examined the elevations carefully on the county cruise. In fixing his idea of the comparative value of the timber he considered the route by which it could be brought out. The timber in the Calawa valley can be brought up the Sol Duc river. The cruiser said that on section 11 there was a good pass from the

Calawa timber up the Sol Duc River and witness looked at the elevations on the county cruise, saw the elevation of the pass and thinks it was 673 feet. It was lower than 700 feet. The elevation of the Calawa River was about 400 and of the Sol Duc about 300, and there is no difficulty at all in going across there. The county cruise showed that there was a good pass to the southeast corner of section 11 on the Sol Duc River. The Lacey timber could go to Port Angeles.

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The proper way to handle that timber is to saw it on the ground and have a mill on Lake Pleasant. Would be a fine place to hold the logs around the mill, plenty of pile ground. Does not know of a more ideal place for a saw-mill than right there. Thinks two small mills would be better than one large one and railroad the lumber to Port Angeles or to the sea. His valuations were not based on that, they were based on taking it to the Pysht River, as he said first, as he was wanted to.

If the timber were milled at the lake it would be worth more. His calculation of the value of the Lacey timber was not based on a terminal rate. It was based on taking the timber through to the Clallam River or the

Pysht. He would not make any difference in his valuation if a terminal rate was not guaranteed in the interior. He did not consider that in making his valuation. His valuation was based on taking the logs to the Pysht or the Clallam. Taking the two bodies of timber being the same value, one remote from transportation and the other close, the value of the remote timber would be as much less than the timber that is close by as the additional haul would cost to get the remote timber to market if the conditions were the same.

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In his calculations he stated what he thought the difference would be between the Pysht tract and the interior timber and the same applies to the Goodyear holdings and the Milwaukee piece and the Earles' timber. The conditions on the Goodyear tract are not as good as Merrill & Ring's. In fact the conditions on the Merrill & Ring timber are better than any of the others in the exterior.

His estimate of two hundred thousand for the railroad to the Lacey tract does not include the equipment of a railroad ready to haul logs. It does not include the branch lines. Two hundred thousand dollars would take the

railroad to the center of the Lacey tract. The real place for the main line is to Lake Pleasant. He figured the length of the railroad at twenty-two or twenty-three miles. It would not make much difference. You could take it thirty miles. It would only increase the cost per thousand about a cent per thousand. The difference is so small you could not figure it per thousand. It would not be considered at all in figuring the cost of operating. His valuation was based on an operating basis. He does not know any other basis to put it on. Is interrogated about a protest made by his company. Is not sure whether they made a protest. Does not know the nature of the protest and could not swear to it. They did not get any relief that he knows of. He believes Mr. Beal or someone told him he had protested. Is not sure whether he did or not. He does know what he protested about. He protested because the interior timber was less than the exterior timber. He doesn't know that he put that in writing or made a formal writing of it, but he was there when the Board convened. Mr. Peters and Mr. Beal were there and the witness protested and will protest until the two are on an equal basis or Merrill & Ring's timber is assessed for less than the Lacey timber. In

the protest that he made against the interior timber being assessed less than others he thinks he was joined by Mr. Earles.

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They have not put any logs in the water yet in the Pysht River. He believes they have cleared a little land.

Has been at the Mike Earles' mill at Port Angeles. Mr. Earles is operating his timber. It is not worth as much as the Merrill & Ring timber. It is not worth as much as the interior timber. The big mill was completed about a year ago. He was there last year.

The mill looked completed but was not in operation. Witness' attention is called to Zone 4 on the map and says that when you get back into the country it gets heavier after you get up in the Forest Reserve, but that the heavy stand of the Lacey timber is on good ground. That is the result of his examination.

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He looked in sections 5 and 6 (pointing), and it looked awfully good to him. It wasn't as heavy timber as sections 31 and 32, which are the best sections in the Pacific Northwest. In fact, he does not know of any better tract of

timber in the Pacific Northwest than this particular tract there on the Lacey timber.

These two sections 31 and 32 are situated similarly substantially with the lands sections 5, 6, 7 and 8 in the northwest corner of Zone 2. The timber in the northwest corner of Zone 4 is not as heavy timber as on the land just across the line of Zone 2. That is all nice level land in there. On the other side of the creek it begins to get more rough. They are not as good so far as facilities for logging are concerned as sections 31 and 32. The witness knows of no lands anywhere that will log as good as those two sections. It is good ground for logging in the upper northeast corner of Zone 4.

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His recollection of the county cruises which he saw three or four days ago is that there is good ground in there for logging. His recollection is that sections 3, 4, 9 and 10, township 29, is good ground. Practically all the ground down there is except where you go out on the edge away from the valley. The Ruddock and McCarthy lands offer a great logging show, a fine logging show. The county cruise shows eighty-eight thousand feet per acre. Such an

average makes it very advantageous. The Ruddock and McCarthy stand averages more per acre than the rest, which surprised the witness because he knew that sections 31 and 32 were so high.

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The cost of a railroad to touch the Ruddock and McCarthy lands instead of stopping at Pleasant Lake would be a very little per thousand. He believes the most advantageous way of handling the interior timber would be to mill it at Pleasant Lake.

That is, right in the heart of the valley, instead of terminating the railroad at Pleasant Lake a cent a thousand would carry it down into the Ruddock and McCarthy lands. That is gravelly soil there and you can build a road for almost nothing.

In 1912 and '14, logs on Puget Sound were a little higher than now. In his judgment logs were higher in 1912 than in 1914. From March, 1912, to March, 1914, there had not been any great demand for logs, a great many camps having shut down. It has been a poor period for logging. The witness is interrogated as to the influence on stumpage of depreciation in the value and lack of demand for

logs and says that timber does not fluctuate as much as logs. It does not fluctuate like the price of logs from year to year, although of course the price of logs has an influence on it. If a man has a tract of timber to sell he cannot sell it as well if conditions are not favorable, but if logs go down a dollar a thousand timber does not necessarily move down that much, but there would be an influence of course. His experience of operating does not show the market on stumpage. The log market might be low, cost of operation high, and the value of stumpage remain unchanged.

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Stumpage sort of goes along on a more even plane, and minor changes in the value of logs does not affect the value of stumpage. There has not been any call during the period of 1912 to 1914 for the opening up of new areas for logging operations, but there has been a tendency to do that. It has been with Merrill & Ring because they have some debts to pay. They would not operate as heavy as they do if they did not have to pay. They have increased their operations what they had to. The operation of the Lacey tract could have been carried on at a profit between 1912 and 1914 at a price

of a dollar a thousand for the stumpage. The witness is sure it could. They have carried on their operations at a profit.

They have carried on their operations and not lost any money on the cost of stumpage both at Grays Harbor and also near Everett. They have not as yet operated on the Pysht, but they have operated in a place where it costs more to log than it would on the Pysht and more than it would cost to log the Lacey timber. One man will make a success of logging and another man will make a failure of it. A railroad such as he has described could have been put into the Lacey timber in the period of 1912 to 1914, two dollars a thousand stumpage paid for the timber and money made on the operation of the timber. That is on the basis of paying two dollars a thousand stumpage and a good deal more could have been made based at a dollar a thousand stumpage. That would be operating it as loggers and paying the owners two dollars a thousand stumpage for the Lacey timber. There would not be any great profit in it, but they would not lose any money.

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The railroad that the witness contemplated

would go up the Pysht River and go over the Pysht or the Beaver Pass. Could go through to Port Angeles, too. He was over the ground several years ago to see how it laid for a railroad and then thought that that was feasible and since then the Milwaukee has built in there part way to show that it is feasible. He has always expected a railroad from Port Angeles to the Pysht and it has looked feasible by way of Lake Crescent. You can estimate approximately within a few miles the length of the railroad that would be necessary. There are large belts of timber there and a few miles of extra railroad won't make much difference in the cost of a thousand feet. The witness figured there was about three billion feet and that it would be economically possible to put a road in there on that basis. There is a great deal more timber available there around the outskirts of that tract. In fact there is a continuous belt of timber from the East end of the Lacey holdings clear down to Grays Harbor. If a man had twice as much as three billion feet of timber the railroad would cost him half as much per thousand. Taking it the other way, if you decrease the holdings there would come a point where it would not be economically possible for him to build the road.

If there were only forty acres there it couldn't be built. If that was the only forty acres there it would have no value if there was no other timber around it. That would be true if he had perhaps a thousand acres.

You could not tell how many acres would be the minimum. You would have to take it offhand and you could not figure it out. If there were only two or three thousand there, if that was the only timber in that belt, it would not be worth anything, but if there was timber around there owned by anyone else or by the state, it would be worth something. He does not believe you could profitably take out two thousand acres of timber from that place on a 40-mile railroad unless you could use the road for some other purpose of hauling than that timber. The timber would have no market price. The witness' valuation upon the Lacey timber is based on the theory of business. That is the only way you can base values. If a man had a thousand acres of timber and some one built in with a railroad to take it out, the timber would be worth something, but the witness would not go in and buy a thousand acres of timber isolated forty miles from transportation, and no one else would. It might have a

speculative value. If you have to tow that hemlock to the market it is not worth much, but the hemlock can be utilized if you have a railroad and saw it on the ground. Hemlock makes good lumber, but in a heavy stand of fir it is rather defective. You could barge the hemlock from points off the coast to a railroad terminal, but not economically.

Where there is a solid stand of hemlock by itself it grows into beautiful trees. Taking timber graded No. 1, 42%, merchantable, 35%, and No. 3, 23%, that would be more valuable than fir that graded 35, 42 and 23, considering it from the operating standpoint.

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There would not be a great deal of difference. You can figure that out, taking the percentage and the price of logs. To get it definitely you would have to figure out the value of the different grades of logs. The first figures wouldn't be very much better; it would be better, but that can be figured out. The higher the grade the more the logs are worth, but not the more valuable the stumpage is. That does not follow the trees as stumpage but the logs would be worth more. If the assessor's books show that the Merrill & Ring graded 42, 35 and 23, and the Clallam Lumber Company

timber the hemlock would be of value. The the Merrill & Ring tract would bring more money in the market.

Re-Direct Examination

In making estimate of the cost of railroads he charged the whole cost of railroad construction up to the timber. He allowed nothing at all for salvage. The ties would be worth nothing. The steel would be worth considerable. In putting in that road he would buy relayers instead of new steel.

Page 386—

It is as good as new steel, and he figured the cost of the railroad on new steel, which is considerable more than the steel he would buy if he were building the road. In valuing the timber graded 35, 42 and 23, the logs from sider milling the timber at Pleasant Lake.

With a mill for the manufacture of the timber on his direct examination he did not con- most economical method of handling the Merrill & Ring timber is the same way; that is, by milling. Merrill & Ring's hemlock is as good as the Lacey hemlock, though he did not look at the percentages between the Merrill & Ring and the Lacey hemlock.

There has not been much demand for stand-

ing timber in tracts large enough to constitute a desirable operation since 1912, but they charge you pretty nearly as much for it as they did at any time when you try to buy one. The witness has offered to purchase a number of tracts and the offer has been refused. They have made offers to buy a tract in Chehalis County, which is 25 miles or more from tidewater and the route to get there is more difficult than to get to the Lacey timber. It is more difficult and fully as long.

Page 387—

The witness offered \$2.50 a thousand for it and that offer was refused. That was this year.

But a year ago, before the war he thought more of timber and was more anxious to buy than at the present time. They have been negotiating for that timber for the last seven or eight years, but have never been able to buy it. It is a nice tract of timber on rough ground, contains about 11,000 acres with about seven hundred million feet of timber. There is just about as much timber as on the Ruddock and McCarthy tract, is much more difficult to log and would cost just as much to get to the market as it would to get the Ruddock and McCarthy timber to the mouth of the Pysht. The road

which would have to be built to that timber would have a grade much in excess of the grade to the Sol Duc valley .

Page 388—

The tract of timber which Mr. Polson referred to in his testimony the witness bought of Mr. France and paid him over three dollars a thousand for it. They have bought in that vicinity, farther from the market than that, at least a billion feet of timber and have not bought any of it in the last three or four years for less than two dollars a thousand. They have bought different tracts and paid over two dollars a thousand for it within the period since 1912.

Page 389—

They bought a tract from the E. K. Wood Lumber Company, on which there was five hundred million feet of timber and paid in excess of two dollars a thousand for that. It is in township 21, range 9, in Chehalis County, in the same belt as the Lacey timber, in the Olympic Peninsula belt of timber. It is 25 miles or more from salt water. It would be logged by railroad after you built the road. There wasn't any railroad in there when they bought it. That was in 1912.

That timber is in the north end of township 21, range 9, and can be delivered in water in the middle of township 17, north, and the road will be over 25 miles long.

Page 390—

In regard to the France timber, they first made an offer to log it for him, then they offered him \$2.50 a thousand this Spring. They offered it to the witness on terms.

It was a purchase of the timber which they would own to hold for future operations.

Page 391—

They did not make France an offer of \$2.50 a thousand until this year. Before they had made offers to log it, but they have been trying to get a price and could not get a price on it. There is a place at the mouth of the Pysht River which the witness is willing to let the plaintiffs use and give them a right of way for a private road of their own. He has been trying to improve the mouth of the Pysht and has had an expert down there for some time to see if that is feasible.

Page 392—

The witness figures it will cost about two hundred thousand dollars to improve the mouth of the Pysht. Clallam Bay is available to the

plaintiffs, as at the present time the Goodyear people are logging there and are building a booming ground on a piece of ground which the witness owns and gave them to use at a nominal rental.

When Merrill & Ring commenced buying in Clallam County they did not know of the existence of the Lacey tract for some time. At that time people did not log back more than two or three miles from tidewater because the only means of logging was with oxen and it was impractical to go more than a mile or so from tidewater to get logs. Railroad operation was not known.

Page 393—

About 1892 Merrill & Ring sent some men over into the Sol Duc valley, found this body of timber and tried to locate it, putting settlers in there, but were unsuccessful because the Government turned them out. He is 46 years old, has been in the lumber business since 1893 and has been in the State of Washington since 1898.

The reason he testified that the Lacey timber and the straits were of equal value was because he wanted to be on the safe side. The cheapness in the cost of logging the interior timber

and the difference in the quality of the timber would be more than offset by the difference in the cost of hauling across that Divide. He looked over the estimates as carefully as possible, treated it just as he would if he was going to buy a tract of timber, figured on the safe side and left a margin in favor of the Lacey timber in his statement.

Re-Cross Examination

Merrill & Ring proposes to utilize the mouth of the Pysht River in their operations and are afraid they will have to spend two hundred thousand dollars. They will log about one hundred million a year. That ground suitable for logging could be increased, if necessary. If building a mill there, would probably have to make about the same amount of excavation to get booming ground for the logs for the mill. If Merrill & Ring could build a mill at the mouth of the Pysht they would do it. Their finances will not allow them to do that at the present time. They intend to build a small mill to manufacture the hemlock.

N. I. PETERSON:

Vol. 2, page 396—

Direct Examination

Is a logger. Has been for about 20 years.

Is now logging at Dungeness in the east end of Clallam County. Has logged in the State of Washington about twenty years. Has been in active supervision of logging operations during all that time. Has bought timber and timber lands in this State and in Clallam County but has not sold any. Is familiar with the market price of logs and of timber and timber lands.

Has driven through the Lacey holdings. Has looked over the county cruises of that tract to some extent. Witness' logging operations are carried on in township 30, range 4. That is near the extreme east end of Clallam County. Witness' timber is fir, cedar and hemlock of rather a poor grade. Their timber runs about 5 to 10% No. 1, possibly 40% No. 2, and the balance No. 3. From what he has seen of the Lacey timber his own does not at all compare with it. His own is a poor grade of timber and what he has seen of the Lacey timber is good.

The timber in the west end of the county is worth double what it is in the east end. The plaintiffs' timber in Zones 2 and 4 on March 1st, 1912, was worth \$2.00 a thousand, for the fir, cedar and spruce. Witness has bought some for one dollar a thousand and some for two dollars a thousand in the east.

end of Clallam County. The market value of the Lacey timber on March 1st, 1914, would be two dollars a thousand.

Has seen a very small portion of the Good-year timber but has never seen the Merrill & Ring timber, nor Michael Earles' timber.

Page 397—

Has skipped through the county cruise of the straits' timber. In his opinion the market value of the straits' timber on March 1st, 1912, and March 1st, 1914, was two dollars a thousand.

Cross Examination

He lives at Dungeness. Has lived there for six years. He commenced operating immediately after he got there and has been operating continuously except at small intervals when they were closed down.

They have logged probably six or seven thousand acres. They log into a little lagoon in Dungeness Bay, railroad their logs as high as 10 miles back; the railroad was there when they came there. They bought the whole operating outfit. It was not in operation. With the exception of a few months in 1911 or 1912 logs have been about six, eight and eleven. The market has been practically the same from

March, 1912, to March, 1914. He went through the Lacey timber in July of this year with his wife, son and another family. They had two automobiles and went through for a trip. His attention was not directed to the Lacey timber. He did not go there to investigate it but simply on a pleasure trip. Has never been through at any other time. Does not know where the Rud-dock and McCarthy land is.

On it being shown him on the map recognizes it and says he has never been through that timber except on this same occasion. Was in court when the other timber witnesses for the defendant testified and heard them testify. He doesn't think his examination of the county cruise was any more in detail than that of the other gentlemen. Did not look at the county cruise with the other witnesses. Looked at that the first time at the Court House in Clallam County.

He expected at that time to be a witness in this case. He did not look over the Lacey timber any more than the other timber. He knew that some of the timber he looked at was Lacey timber. They told him it was. Made no tabulated statement of it.

on any particular page, took no notes. That was all the examination he made. Made the same examination of the straits' timber on that occasion. He was an hour or so, not over two hours in doing that. He doesn't think he examined the whole bunch of the timber, he did not go through the whole book. He would not buy the timber on the examination he made. He did not base his testimony about the market value of the west end timber on any sales, he based it on the body and volume of the timber there was in there. There is a great deal of timber in there in large tracts.

He does not know of any sales in the lands of the Lacey timber. Has not known the Lacey timber as much as five years. Is not in touch with the sale of timber lands in the west end of the county. Does not know of any sales that have occurred there in the last four or five years. Doesn't know of any sales in the west end of the county. In his opinion the hemlock in the west end is worth from 25 cents to 30 cents a thousand. Did not examine as to how the sections ran in respect to hemlock. Made no examination of the cruise as to the hemlock.

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They have some hills, not very steep hills.

The country is level until they get up into the foothills. They have 10 or 11% grades on it, on their branch or spur lines. They have 5% grades on their main road going in with empties but not coming out. It is good country for logging.

Re-Direct Examination

The ground he was on in the interior in the west end of Clallam County was good ground. He saw some rough land but did not see any timber on it. He is asked to compare his own logging show with that he saw on the lands of the plaintiffs, and witness says plaintiffs' lands are more favorable. He is logging land containing from fifteen to sixteen thousand feet of logs to the acre and over there there is a great deal more. There would be four times that in some places. The thick timber is more favorable for logging operations than his own.

Re-Cross Examination

He took observation at the time he went through the Lacey timber with a view of telling whether those lands were good for logging.

He was not down there to make any investigation. "I have been in the business a good many years, and whenever I go into timber I most generally pay some attention to it, always

do." He saw more than simply from the automobile road. He stopped and went into the timber a short distance off the county road; could not tell where it was or whose timber.

Page 400—

Whenever they camped sometimes they would look around a little. He could not tell from the map where he camped.

S. A. WALKER:

Direct Examination

Vol. 2, page 394—

Witness is a civil engineer. Has had 14 years' experience, four years experience in surveying, laying out and constructing logging railroads.

Page 395—

Has been employed by the Northern Pacific Railway Company, the Milwaukee Company, the Copper River & Northwestern and the Spokane & International. Has been employed by Merrill & Ring. Has surveyed a railroad route from the mouth of the Pysht up the Pysht and across what is known as Beaver Pass. Thinks you can get a 2% grade from the summit to the Pysht in a distance of 11 miles. There were no unusual conditions or obstructions

which would make that railroad costly. Did not get a detailed estimate, but has an opinion of the cost. Thinks \$5,000 on the subgrade and \$6,000 above it is the highest cost; that would make \$11,000 a mile, using 60-pound steel. Investigated a route for a road from the summit on down to Sol Duc. Believes you can get a one per cent grade from the summit to the cross roads below Sapho, the junction of the county roads.

The cross roads (indicating on the map) is about the center of the tract. A railroad from the Pysht 11 miles to the summit and 7 miles to the cross roads would be 18 miles or \$191,000, with a maximum degree of curvature of 15 degrees. That curvature and grade can be easily operated.

Cross Examination

The road he was working on came out at Pysht. The summit of the Pass is in the center of the southwest quarter of section 35 and he followed right down the county road to the quarter corner between sections 26 and 27.

The terminus of the road on the north was Pysht and on the south the cross roads, a little below Sapho, and east of Lake Pleasant.

Re-Direct Examination

In making his estimates of the cost of this

railroad he used 65-pound steel to the yard. That would make hardly as good a road as a common carrier would use because the logging road does not need to be that good.

Page 396—

He made this investigation for Merrill-Ring Lumber Company, and has been in there the last two summers; six months the first summer and four months the second summer.

R. W. REMP:

Direct Examination

Vol. 2, page 400—

He has made a survey for a logging road from the summit of the Pass down to the mouth of the Pysht. Has found it possible to construct a railroad on a working grade of 4% in favor of the load down to the mouth of the Pysht on an 8.2 mile line. By lengthening out that line two miles they could reduce the grade to less than 3%. From the summit down to the Sol Duc he could run a 4% grade straight down the valley. The summit is in the southeast quarter of Section 35, township 31, range 12, at an elevation of 797.5 feet. The elevation of the cross roads at Sapho was 452 feet, making a difference of 327 feet, which would be less than a one per cent grade. He terminated his

survey on the cross roads where the Sol Duc road meets the road to Clallam.

He believes the timber could be taken care of from that point. They could probably put their spurs out from there without any disadvantage.

Cross Examination

He has built railroads; was superintendent of the R. R. & N. railroad from Tillamook to Buxton, a logging road one hundred miles long. Built that from 1908 to 1910. Was assistant to Mr. Cook of the Northern Pacific Railroad for four years.

He is the Assistant Chief Engineer of the Northern Pacific now. Witness had charge of construction work under him; had actual charge of the work about two years and a half. He moved the bridges at Grays Harbor; made the line changes which were made down there which was considered the heaviest piece of construction on Grays Harbor.

Page 401—

He moved the bridges on the Grays Harbor branch of the Northern Pacific Railway under traffic and put in the steel that is there now .

Direct Examination

This road to the Pysht included earth work,

road boxing, curbing, clearing, burning. The clearing was 40 feet and the break 20 feet wide on an average. That's about the ordinary method of railroad construction. The right of way 20 feet wide. He has the whole thing totaled and averaged. He made a written report on it which he presents. His total estimate up to the sub-grades for the 8.2 miles for 60 pound steel was \$47,518.58, an average of \$4715.58 up to sub-grade. Average cost per mile for 56 pound steel from the top of the hill down to the mouth of the Pysht River \$10,351.17, and the average cost for 65 pound steel is \$11,610.94. That would construct a road as well as the average main line common carrier railroad. From the summit down to the Sol Duc the figures above given would take care of it, but that average would be way high. The total distance from the mouth of the Pysht on this line by his survey would be 14.83 miles and the total cost of that road with 65 pound steel would be \$173,000. On such a road the maximum degree of curvature would be about 15 degrees, and he believes he could reduce that some.

Cross Examination

Page 402—

From Sapho down to the lower end of Lake

Pleasant would be about a mile and a half and to about the heart of the holdings about $6\frac{1}{2}$ or 7 miles. That's about the middle of the Rud-dock and McCarthy lands.

J. E. FROST:

Direct Examination

Vol. 2, page 402—

Lives at Seattle. Is a logger. Was a member of the State Board of Land Commissioners from 1907 to 1912, during which time he cruised and appraised and sold many tracts of timber land in this State.

On July 1st, 1912, was a member of the State Capitol Commission and as such cruised and appraised about 100,000 acres of timber land in Western Washington, of which about 27,000 was in the West end of Clallam and Jefferson Counties. From 1905 to 1912 was a member of the State Board of Tax Commissioners, in which position he was brought in contact with timber conditions and timber values in Western Washington. In the early history of the Tax Commission started to thoroughly investigate the assessment of property in this State.

Page 403—

They made an exhaustive investigation of

the assessment of timber lands in the various counties and entered upon an earnest campaign for the cruise of timber in this State which resulted in cruises by the various counties of the timber lands within their borders. The Tax Commissioners also assessed the Public Service properties.

They comprise a majority of the State Board of Equalization and assess the Public Service properties in the State which by law are equalized in the various counties at the same proportion of their actual value as the general mass of property within that county is equalized. It therefore becomes necessary for the State Board to ascertain the ratio of assessed and actual value of the properties in the counties within which such Public Service property is situated. A member of the State Board has the power to subpoena and compel the attendance of witnesses. A great many witnesses were examined throughout the State of Washington as to the market value of property. The witness conducted these hearings and examined under oath men who were qualified to testify to the value of timber lands. Witness held those hearings personally in Clallam County.

Page 404—

Has been in the logging business for about

three years, during the last two years in active supervision on the ground and in the field, with actual superintendence of all the principal logging operations, including the marketing and selling of the logs. Is secretary and manager of the Cedar Lake Logging Company, operating partially in the Cedar Lake water shed and partially in the Snoqualmie water shed. Is constantly building logging railroads; had a force of men constantly engaged in doing that under his own supervision. Was in the employ of the Frost Lumber Company in Pennsylvania many years ago, where he supervised the construction of logging roads and other railroads down through the Allegheny Mountains.

Page 405—

In his boyhood days was in the employ of the Pennsylvania railroad for two years as civil engineer in charge of railroad grading and in charge of the track laying on the Ridgway & Connellsville Railroad. Also worked as civil engineer on the construction of the Buffalo, Rochester & Pittsburgh in Pennsylvania. In this State has become familiar with all the commercial timbers of Western Washington, which are, principally, in their order of importance, fir, cedar, spruce

and hemlock. He logs from five to seven million feet a month and has marketed all of his company's output at all times. He knows the prices of logs during the last two years or two and a half years. Heard the testimony of Mr. Polson.

Page 406—

His recollection is that Mr. Polson testified that a large portion of the hemlock would be used in logging operations, and such as could be salvaged would be worth a dollar a thousand stumpage, as hemlock lumber has the following commercial uses. Clear hemlock is largely used in siding and finishing lumber. It has a market in the extreme East where they are familiar with hemlock. Ordinary grades of hemlock are largely used in the manufacture of boxes, particularly all boxes for the purpose of containing materials which absorb odors or flavors, as it is odorless. There is a very good market for hemlock. The price of hemlock logs has increased in the past three years. About three years ago our hemlock was sold at a No. 2 fir price or slightly under that; that is, from five to five and a half a thousand. During all his logging operations last year he sold hemlock for \$6.75 a thousand and is now receiving \$6.50 for hemlock logs.

His hemlock and spruce are sorted separately. The inferior grades of spruce are largely used for the same purposes as hemlock and they ordinarily sort and sell their hemlock and spruce together. This year they have built and rebuilt six to eight miles of railroad in their logging spurs and getting on their lands.

They log between twenty and thirty acres to one landing. Those logging spurs and landings are built over and over again. They have possibly built ten miles this year, and is using hemlock ties altogether, which are hewn upon the ground. The defective hemlock is used to build landings on which the logs are hauled to put them on the cars. There has in the past two years been a very active market for hemlock. Their hemlock has had a much more ready sale than fir; that is, hemlock and spruce, and spruce logs are higher now than at any time since three years ago. The witness' main line is approximately seven miles with spurs going out into the various logging operations.

The greatest maximum curve on his road is 18 degrees. They have one grade of 3.5%. They have miles which average 5.6% the whole dis-

tance. The 5.6% grade is compensated or flattened on the curve and steeper on the tangents or straight lines.

The witness is moving over that road now from forty to fifty standard carloads of logs per day and operates his main line with one locomotive. In the timber which he purchased they have an unusual percentage of hemlock and in the year 1914 marketed approximately nine million feet of hemlock. It was the most profitable timber he logged last year. They operated last year a log dump in the City of Seattle where his hemlock was all dumped into salt water, rafted and towed from Seattle to Anacortes and Bellingham to large box factories to whom the hemlock was sold. This is a tow fully as far as from the mouth of the Pysht to Anacortes or Bellingham. Is now dumping his logs in Everett. Last year he paid \$1.60 a thousand to the Milwaukee to haul it to Seattle and this year they made a rate of \$1.40 to Everett, which is twenty cents cheaper although a longer haul.

Cross Examination

Page 409—

The rate to Seattle was \$1.60 a thousand and the minimum load was 7000 feet per car. The logs were small and frequently under mini-

mum, so that the actual freight cost at first was \$1.72, and the rate to Everett with a maximum of 6500 to the car was fixed at a rate of \$1.40. The Everett line was a branch line and the Milwaukee preferred to handle the logs over it rather than on the main line of the Transcontinental. The \$1.60 rate was for a 40 mile haul and the \$1.40 for a 59 mile haul.

Has not recently been engaged in any other logging operations than the one on Cedar Lake. Has made no other purchases. Has purchased one hundred and eight million feet of timber from the City of Seattle on competitive bids. Some of his logging operations consist of cutting trees on the slope of Cedar Lake and bringing them down to the water. Some places he cuts back two miles from the lake.

Page 410—

He built the whole line of railroad from Cedar Falls to Cedar Lake, 4.37 miles of railroad, and put it in complete for operation, with unusually severe specifications, for \$3,750 a mile. The City on this portion furnished the steel, fastenings and ties. There is approximately three miles of the remainder which is his own road, built with his own steel. His purchases from the City are only about one-third

of his operations, he having others under contract from the Weyerhaeuser Lumber Company. The railroad he talks of was built by the Cedar Lake Logging Company under contract with the City.

He pays the City for his timber as they take it off, actual log scale, on a monthly settlement basis. Is carrying no risk so far as the ownership of the timber is concerned. Does not think the hemlock he is taking out is better than the usual grade of hemlock.

Page 411—

Some of it is pretty good and the larger portion of it is what is called low ground hemlock. The hemlock that grows in low, swampy ground, as a rule, is hollow butted, heavy, ususally not clear, and the limbs grow closer down. The upland hemlock, growing on gravel soil, is better, taller, straighter and smoother, and not so inclined to have ground rot.

Does not think he is getting better than the regular market price for hemlock. Has no special advantages over other loggers. His opinion as to the value of hemlock is formed from many considerations. Has made a thorough and comprehensive study of all phases of the lumber and logging business in the Northwest.

Does not know of any sales of hemlock

except his own from his own personal knowledge.

Page 412—

Witness' fee in this case is partially on contingent basis.

Page 414—

In the event the defendants are successful in this suit his fee is to be twice as large. The witness' logging operations are 47 miles from Seattle, 40 miles by the Milwaukee and 7 miles by his own logging road. In a direct line it would not be so far.

4

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

REPLY BRIEF OF APPELLANTS

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Appellants.
Seattle, Wash.

BUTTERFIELD & KEENEY,
Of Counsel.
Grand Rapids, Mich.

Filed

IN THE UNITED STATES CIRCUIT COURT OF
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vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer,
Appellees

No. 2906

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CARTHY,

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CLIFFORD L. BABCOCK, Treasurer,
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HERBERT H. WOOD, Treasurer,
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CLALLAM COUNTY, a Municipal Corporation, and
HERBERT H. WOOD, Treasurer,
Appellees

REPLY BRIEF OF APPELLANTS

While it is impossible for the appellants in the short time before argument to reply fully to the voluminous brief of the appellees, they desire at all events to cover several points which they believe will materially assist the Court in a review of these cases.

In the first place, the appellees, at pages 196 to 198 of their brief, charge the appellants with having erroneously set out in their brief, at pages 78 to 80, the provisions of Section 9200 of Remington and Ballinger's Code relative to the duties of the Board of Equalization.

It is true, as claimed by the appellees, that this section as set out in our brief—pages 78 to 80—is the statute as amended in 1915, and not as it stood in 1913 and 1914, when the assessments complained of were made

The error in the brief arose in this wise: Our clerk in transcribing for the printer Section 9200 of Remington and Ballinger's Code, by an oversight took this section from Remington's Code and Statutes, Volume 2, pages 3584-5-6, which was published in 1916, and included amendments of the Legislature of 1915, instead of a copy of the section as it appears in Remington and Ballinger's Code published in 1910, which did not, of course, contain the amendments of 1915.

The variance complained of by the appellees is the following: The law as it stood in 1913 and 1914, in

setting out the duties of the Board of Equalization, contains the following at the end of the first section of the law:

“They shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, subject to the following rules.”

Whereas, by the amendment of 1915, the law now reads:

“They shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value *according to the measure of value used by the county assessor in such assessment year*, and subject to the following rules.”

The words above italicized were added by the law of 1915, and therefore, of course, are not applicable to assessments made in 1913 and 1914.

This mistake, if material to the matter under discussion in our brief in chief, was, we submit, against our own interest and in favor of the appellees and we are the more indebted to them for straightening the matter out.

Section 9200 was referred to by us to show that the Board of Equalization in our taxing system was a

quasi judicial body, that its members had an active duty to perform calling for the exercise of independent inquiry and judgment, and that the assessment roll made up and returned by the assessor did not become a binding assessment or a completed official act until passed upon in a quasi judicial manner by this Board of Equalization.

We showed that three out of the five members of this board, including its chairman, knew nothing about the basis at which property had been assessed in the roll by the assessor or the rate of assessment as to whether it was assessed at fifty per cent of its actual value or one hundred per cent, the fourth member of the board being the assessor himself; that they merely O. K.'d in total ignorance without inquiry the assessment rolls handed up to them by the assessor.

We believe that the statute as amended in 1915 required the exercise of discretion, independent judgment and intelligent examination by the Board of Equalization of the rolls presented to them in requiring the board to see that the property, real and personal, was "entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules."

We are satisfied that the statute as it stood in 1913 and 1914 imposed these powers, these duties and this

function on the Board of Equalization by requiring them to see that real and personal property "shall be entered on the assessment list at its true and fair value, subject to the following rules."

As a matter of fact, counsel for the appellees have been equally unfortunate in transcribing this Section 9200 as it stood in 1913 and 1914 by omitting therefrom the following. Appellees' brief, page 197, the section actually reads as follows: "Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value *to such price or sum as they believe to be the true and fair value thereof.* * * *"

The above words italicized are omitted in the appellees' copy of the section.

Also on page 199, counsel by oversight or involuntary inspiration, made the section read: "Provided, that no taxes, except special taxes, shall be extended upon the *payrolls* until the property valuations are equalized by the State Board of Equalization for the purpose of raising the state revenue." The word "payrolls," according to the text, should have been "taxrolls."

With this explanation, no doubt counsel for appellees will withdraw the insinuation of any intentional misquoting of the statute by ourselves, as probably hastily indicated in their brief.

It is the law of this state that a property owner whose property has been assessed at a rate in excess of other classes of property in the county, arbitrarily or through capriciousness of the assessing officials, or intentional discrimination, may obtain relief although his property is assessed in the same manner and at the same rate as other property in its class and although it is not assessed at more than its actual value.

The appellees contend for the contrary to this proposition throughout their brief, beginning with page 22 and elaborated at pages 156 to 164. The law of this state is found in the following cases:

Andrews vs. King County, 1 Wash. 47.

To the same contention made in that case, the Supreme Court answered:

“And the fact that plaintiff’s property is attempted to be assessed at its par value, will not deprive him of the constitutional guaranty, if by the under-valuation of other property he is compelled to bear more than his just proportion of the burden of taxation.”

State ex rel O. R. & N. Co. vs. Clausen, 63 Wash. 535, was an appeal from the State Board of Equalization which had raised the valuation fixed by the State Railroad Commission. From the judgment of the Trial Court affirming the order of the state board, the relator appealed and the decision was reversed.

The case is of value on the point that a percentage basis of assessment has been recognized and enforced by the Courts. With reference to this the Court says, page 542:

"It is further contended that, in any event, the value of the property as equalized being less than the value as ascertained by the Tax Commission, the relator is not harmed, because it is not called upon to pay a tax upon its full value. While theoretically all property should be assessed at its full value, it is well known that it is not so; that while the taxing authorities have undertaken to, and have with a greater or less degree of accuracy arrived at that true value, yet a certain percentage is accepted as a basis of valuation for tax purposes. There would be merit in this contention but for the fact that it is admitted that like property of other railroad corporations has not been so assessed. The value as fixed by the Railroad Commission was accepted in all other cases, and to sustain the finding of the Board of Equalization would be to put an unequal burden on the relator, thus violating the guaranties of the Constitution. To these guaranties the Courts cannot be blind."

Savage vs. Pierce County, 68 Wash. 623.

Here the county had valued complainant's property at \$98,000, and assessed it at \$50,000. The court on objection found that this was a gross over-valuation, that the property was actually worth \$42,00, and should have been assessed at not over \$26,000, because the county had adopted the system of assessing all other property in the county at sixty per cent. of its true

value. It will be observed that there was no fraud or capriciousness shown in this case.

“The county officers having adopted a measure of value and applied the same to all property in the county, can in no event be permitted to apply a different measure of value to the property of these respondents for the purpose of measuring the amount of taxes they are required to pay thereon. Uniformity is the highest and most important of all requirements applicable to taxation under our system. * * *”

Spokane & Eastern T. Co. vs. Spokane County, 70 Wash. 48, was a suit brought to enjoin the collection of a tax.

The plaintiff was a banking and trust corporation, the capital stock of which was supposed to be assessed at its full and fair value according to the code. Spokane County had, however, for years assessed all property, real or personal, at 37.42% of its real cash value, except bank stock, which was assessed at 60% of its real value. These facts being stated in the complaint, a demurrer thereto was sustained by the trial court, and the sufficiency of the cause of action therefore squarely presented to the Supreme Court for determination. After quoting the provisions of the State Constitution requiring a uniform and equal rate of assessment, the court says, page 52:

“As was said in *State ex rel. Wolfe vs. Parmenter*, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707: ‘It is just as imperative that taxa-

tion shall be uniform and equal upon all property as it is that all property shall be taxed.' There is neither uniformity nor equality were all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent. of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and arbitrary discrimination against a particular class of property. Such an arbitrary policy is vicious in principle, violative of the constitution and operates as a constructive fraud upon the rights of the property holder discriminated against." Quoting numerous authorities.

Spokane & Inland E. R. Co. vs. Spokane County, 82 Wash. 24, was an equitable action involving the validity of the tax levy of 1912.

This case also follows *State ex rel. Spokane & Inland E. R. Co. vs. State Board of Equalization*, 75 Wash. 90.

The court says, page 29, quoting and following this case:

"On the question as to whether, as a basis for the assessment of appellant's property in Spokane County, 42.16 per cent of its value may be taken while other property in the same county is assessed at 32 per cent of its value, that is a question which seems to have been determined in the case of *Spokane & Eastern Trust Co. vs. Spokane County*, 70 Wash. 48, 126 Pac. 54, Ann. Cas. 1914 . 641. In that case, the basis for assessment of bank stock was at a higher rate than other

property in the county, and this was not due to an erroneous valuation or the difference in judgment as to the correct measure of value, but was due to an intentional and arbitrary discrimination against that particular class of property."

That the law contended for by the appellants is supported by the greater weight of authority in both the federal and state courts generally, is shown in our brief in chief—pages 63 to 73—but it surely is the rule in the State of Washington which we have cited and perhaps repeated in the above cases, and the federal courts would, we respectfully submit, be bound by a practice adopted by the state court with respect to its system of taxation of property within the state.

Respectfully submitted,

EARLE & STEINERT,

PETERS & POWELL,

Attorneys for Appellants.

BUTTERFIELD & KEENEY,

of Grand Rapids, Michigan,

Of Counsel.

